

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2011

LEGAL DRAFTING AND INTERPRETATION

(WEDNESDAY, AUGUST 3, 2011)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **but must state at the beginning of the answer the name of the relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Section 10 of an Act which provides for the control of narcotic drugs reads as follows –

- “10. A peace officer may, at any time*
- (a) Without a warrant enter and search any place other than a dwelling-house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;*
 - (b) search any person found in such place; and*
 - (c) seize and take any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.”*

The accused owns and operates a small grocery store. One day, when the accused was in the store, a peace officer entered and told the accused he was searching for prohibited drugs; he had no writ of assistance or warrant. After searching the store and finding no drugs, he attempted to search the accused. The accused objected and forcibly ejected the peace officer from the store and locked the door. A charge of resisting a peace officer in the lawful execution of his duty was laid against the accused. At the trial, the peace officer admitted on cross-examination that he had no grounds

whatever to believe that the accused had any prohibited drugs in his store or on his person.

It is conceded that if the attempted search of the accused was illegal, the charge should be dismissed; but if the attempted search was lawful the accused should be convicted.

As the trial judge, what is your judgment? Give reasons.

QUESTION 2

The Criminal Justice Act which came into force on January 2, 2010, provides as follows at section 20:

“(1) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person because that person is an alleged accomplice of the accused is hereby abrogated.

(2) Nothing in this section applies in relation to:
(a) any trial on indictment; or
(b) any proceedings before a Magistrates’ Court,
which began before the commencement of this Act.”

Kent was charged for murder on June 13, 2009 and the case for the prosecution rested largely on the evidence of Joe, a self-confessed accomplice of Kent. Proceedings were completed in October 2009 when Kent was committed for trial.

The trial began on April 24, 2010 and the judge in the course of his summing up did not give any warning to the jury that it was dangerous to convict on the uncorroborated evidence of Joe.

Kent was convicted of murder and now wishes to appeal on the ground that the judge had erred in failing to give the warning since the new law came into effect after he, Kent, was charged.

Advise Kent.

QUESTION 3

The appellant, Innocent Young, was on April 1, 2011 convicted before a judge and jury of the offence of the murder of John Bully on September 15, 2009. Innocent was born on December 20, 1990. He was sentenced to death.

He desires to appeal against the sentence and the matter has been referred for your opinion and advice.

Section 12 of the Juveniles Act reads –

“Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years; but, in place thereof, the Court shall sentence him to be detained during Her Majesty’s pleasure.”

Chapter I, sections 15 and 18 of the Constitution provide –

“15. No penalty shall be imposed for any criminal offence which is more severe in degree or description than the maximum penalty which might have been imposed for that offence and at the time it was committed.

18. Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter, and nothing done under the authority of any such law shall be held to be done in contravention of these provisions.”

Advise him. Give reasons.

QUESTION 4

Last year Anna Morton prepared her Will without legal assistance. The Will was properly executed. In it she appointed her brother, John Goodman, as executor. Ms. Morton disposed of her estate as follows:

- “1. I give my daughter, Rita Morton, my precious 1980 Jaguar car, my boat, jet-ski, antique furniture and other effects. After her death anything that is left to go to my brother Roy Belle.*

- 2. My house at No. 15 Lands End and all my money is to go to my son Jason.*

3. *To my niece, Kay-Kay, I give my silver jewellery box and all of its contents.*
4. *All the rest of my property I leave for my mother Mabel Lou.”*

Anna died suddenly last month. Her brother, Roy Belle, had predeceased her. At the time of her death, Anna also owned government bonds, several expensive oil paintings and an acre of land in Tootsie Hill.

Two weeks before her death Anna had traded in her 1980 Jaguar for a 2003 model. Anna also had two nieces, Kay Wells and Karen Goodman, whom she affectionately called Kay-Kay.

John Goodman has sought your advice on the following:

- (i) The beneficiary of the gift at clause 1.
- (ii) Whether the beneficiary of the gift at clause 1 is entitled to any of the undisposed part of the estate.
- (iii) Whether Jason is entitled to any of the undisposed part of the estate.
- (iv) Which of the two nieces is entitled to the jewellery box and its contents.

Advise John Goodman.

QUESTION 5

Ann, a young attorney-at-law, in drafting a lease for her client decided to redraft the clause set out below which was taken from a precedent regularly used by other attorneys-at-law in the firm.

The precedent read as follows –

“To permit the lessor and the maintenance trustee or their respective agents either alone or with workmen at any reasonable hour in the daytime after reasonable notice except in the case of emergency to enter the apartment and examine the state of repair and condition thereof and to take an inventory of the landlord’s fixtures and fittings therein and about the same and that the lessee will repair and make good all defects or want of repair of which notice in writing shall be given by the lessor or the maintenance trustee to the lessee within three calendar months (or sooner in case of emergency) after giving of such notice and if the lessee shall at anytime make default in the performance of any of the covenants hereinbefore contained for or relating to the repair or decoration of the apartment it shall be lawful for the lessor (but without prejudice to the right to re-entry under the clause hereinbefore contained) or the maintenance trustee to enter upon the apartment and repair or decorate the same at the expense of the lessee in accordance with the covenants and provisions hereof and the expenses of such repairs or decorations shall be paid by the lessee to the lessor or the maintenance trustee (as the case may be) on demand.”

Ann's redraft was as follows –

- “1. To allow the landlord, the trustee and their agents and employees access:*
- (a) to inspect the condition of the apartment but except in an emergency only during the day and on reasonable notice; and*
 - (b) to make good any failure by the tenant to comply with any notice to repair or decorate within a reasonable time.*
- 2. To repay on demand any costs arising under paragraph 1(b).”*

Comment on the adequacy or otherwise of the redraft.

QUESTION 6

The Chief Personnel Officer (CPO) is, under the Education Act, the government's designated representative to negotiate with the recognized Teaching Service Association on terms and conditions of employment and related matters. The parties have been consulting on increased salaries for teachers. There has been no agreement on proposals put forward by the CPO, and on December 4, 2010, he reported the matter to the Minister of Finance as provided for under section 61 which provides -

“Where the Chief Personnel Officer consults and negotiates with representatives of the appropriate recognised association with respect to matters specified in section 62 at the request of such representatives, and the Chief Personnel Officer and the appropriate recognised association are, within twenty-one days of the commencement of such consultation

and negotiation, or within such further period as may be agreed upon, unable to reach agreement on any matter, the Chief Personnel Officer or the appropriate recognised association shall report the matter on which no agreement has been reached to the Minister of Finance and on such report being made a dispute shall be deemed to exist as to such matter.”

Section 62(1) provides –

“Where a dispute is deemed to exist under section 61 the Minister shall refer the dispute for settlement to the Industrial Court within twenty-one days from the date on which the dispute was reported.”

The Minister referred the dispute to the Industrial Court on January 3, the first working day after the New Year holiday.

The Association now challenges the jurisdiction of the Court to hear the dispute saying that since the matter was not referred in time, the parties should revert to negotiations. The Association itself never referred the matter to the Court although subsection 62(2) enabled it to do so at the expiration of the twenty-one days specified in subsection 62(1).

As the judge in the matter, what is your decision? Give reasons.

QUESTION 7

The Secretary of a co-operative society has written to you as follows –

“Dear Attorney,

A problem has arisen involving different interpretations of rule 42 of our new Rules.

This rule states as follows: -

‘42. The Board of Directors is vested with the power and authority to purchase, lease, or otherwise acquire real and personal property and to borrow money for that purpose upon the favourable vote of at least three-fourths of all the Directors.’

Some of the Directors are of the view that the provision means that decisions of this nature must be by a majority vote of at least three-fourths of the total membership of the Board. This has meant, on a number of occasions, that an otherwise properly constituted meeting of the Board has been unable to make a decision on an urgent matter to do with the acquisition of property because there were less than twelve Directors present at a meeting (the Board consists of fifteen Directors) or that less than twelve persons, although constituting the required majority of the Directors present, voted in favour of a proposal.

Other Directors, however, are of the view that when the rule speaks of the “favourable vote of at least three-fourths of all the directors”, it is saying that the decision requires a three-fourths, or more, majority of the directors who are present at a duly constituted meeting of the Board and that this would mean the favourable vote of less than twelve Directors, if the attendance was less than full. Rules 43 and 44 seem to support this view by providing that –

‘43. The Directors shall meet together for the dispatch of business at least once in every three months, and subject thereto they may adjourn and otherwise regulate their meetings as they think fit.’

Questions arising at any meeting shall be decided by majority vote. In case of any equality of votes the Chairman shall have a second or casting vote.

44. The quorum necessary for the transaction of the business of the Directors shall be a bare majority of the Directors.'

This is our current dilemma and we would appreciate your opinion at your earliest convenience as this is a matter of great urgency.”

What is your advice? Give reasons.

QUESTION 8

John Tubby is a practising quantity surveyor and, since 1984, a founding director of J.T. Real Estate Limited. In addition, since 1986 he has been involved in the real estate business of the firm 6-8 hours each day. In September 1990, he applied to the Real Estate Board for registration as a real estate dealer under the Real Estate Dealers and Developers Act which came into effect in August 1990. In November 1990, however, the Board rejected his application and stated as its reasons –

“That the applicant was not involved ‘whole time’ continuously in the practice of real estate business for two years prior to the coming into operation of the Act. Further he was not a certified real estate dealer. In arriving at this decision the Board considered the definition of real estate dealer in section 2, and the provisions of section 21 and section 28.

“real estate dealer” means –

- (a) a person who on his own account, engages in the practice of real estate business; and*
- (b) an individual who is –*
 - (i) a member of a partnership; or*
 - (ii) a director or officer of a corporate body, which itself engages, on its own account, in the practice of real estate business;”*

Section 21 states –

- “21. (1) Notwithstanding the definition of real estate dealer, a person shall not be qualified for registration as a real estate dealer if –*
- (a) in the case of an individual he does not possess the prescribed qualifications for such registration; or*
 - (b) in the case of a body corporate –*
 - (i) a resolution has been passed or an order made by a court of competent jurisdiction for its winding-up;*
 - (ii) a receiver has been appointed for any of its property;*
 - (iii) at least one of its directors does not possess the prescribed qualification for registration.”*

Section 48 states –

- “48. Notwithstanding anything in this Act, a person who immediately before the date of commencement of this Act was engaged ‘whole time’*

in the practice of real estate business as a real estate salesman for a continuous period of two years before such date, shall if he has applied for registration within sixty days of the date of commencement of this Act be entitled to continue such practice without being registered or granted a licence under this Act.”

John Tubby has appealed this decision. Before the Court of Appeal, his attorney-at-law has submitted that the Real Estate Board erred in not approving the registration of the appellant as a real estate dealer in that –

- (a) at the time of considering the appellant’s application the Board had already approved the registration of J.T. Real Estate Ltd. as a real estate dealer. At all material times the appellant was a director of the said company therefore the Board would have already determined that the appellant possessed the prescribed qualifications for registration as a real estate dealer.
- (b) the Board failed to ascribe the correct meaning to the words ‘whole time’ as they appear in section 48 of the Act in that the Board interpreted the words ‘whole time’ to mean ‘exclusively’ instead of to mean ‘approximately 8 hours per day’.

It was argued on behalf of the Board –

- (i) that section 21 does not require that all the directors have the statutory qualifications of a real estate dealer and consequently the question of estoppel could not arise when the application of J.T. Real Estate Ltd. was approved, and in fact another director was a qualified real estate dealer;
- (ii) that the appellant did not comply with section 48 since he practises primarily as a quantity surveyor and that his real estate activity was merely part-time.

As a judge of the Court of Appeal what is your judgment? Give reasons.