

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2015

LEGAL DRAFTING AND INTERPRETATION

(AUGUST 14, 2015)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## QUESTION 1

Benny owns three hectares of pasture land which adjoins land belonging to Sophie. Early on the morning of May 10, 2015, Benny went to his property and saw five head of cattle grazing there. His suspicion that the cattle belonged to Sophie was soon confirmed when one of Sophie's farm hands, John, came to drive the cattle back to their own pasture. He told Benny that the cattle had broken through a section of a wire fence.

Later that day, Benny had a valuation made of the grass eaten and sent it to Sophie who refused to accept it.

On May 11, 2015, Benny went to see Sophie with respect to the incident. Sophie refused to speak with him. Two weeks later Benny brought an action for cattle trespass contrary to section 2 of the Cattle Trespass Act. The action was heard and determined by a magistrate who held that Benny had failed to satisfy the provisions of section 2 and, in particular, the proviso thereto, by failing to give proper notice to Sophie.

Section 2 of the Cattle Trespass Act provides as follows –

*“It shall be the duty of the proprietor of any cattle to take proper and effective measures to prevent such cattle from trespassing on the land of other persons and subject to the provisions hereinafter contained such proprietor shall be responsible in damages in respect of any injury done by such cattle trespassing on to the land of other persons: Provided always that within forty-eight hours of the discovery of such injury the party aggrieved shall give notice of the nature thereof to the proprietor or person in charge of the cattle causing the same, and shall thereafter allow him and his valuers free ingress to the land at all reasonable times for the purpose of inspecting the same; and shall, if required, point out the location of the damage complained of, and if, on the hearing of any action brought to recover any such damages as aforesaid, it shall appear that the plaintiff has failed to give such notice as aforesaid, or having failed to give such*

*notice shall not account for such failure to the satisfaction of the Court, or that the plaintiff has obstructed the defendant or his valuers in their inspection of the alleged damage the plaintiff shall be nonsuited.”*

Benny wishes to appeal this decision and has sought your advice.

Advise Benny. Give reasons.

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## **QUESTION 2**

Your client, Coffee Products Ltd. (CPL), which is engaged in the manufacture and sale of a variety of coffee products, entered into the following contract with International Food Traders (IFT) –

*“This Agreement dated the 8<sup>th</sup> day of May 2013 between Coffee Products Ltd. (CPL) of Top Mountain Village and International Food Traders (IFT) of 2514 5<sup>th</sup> Avenue, New York 3107, New York, U.S.A.*

*Whereas IFT warrants that it has the right title and interest in and to certain inventions relating to methods and apparatus for processing fruit solids and to certain inventions relating to processing products and know-how in relation thereto and*

*Whereas IFT has obtained local Patent No. 1117 and will obtain additional patents in the territories of the agreement and is now desirous of exploiting said inventions by licensing in the territories of the agreement and*

*Whereas CPL is now interested in obtaining from IFT certain rights to use said inventions in processing the coffee bean,*

*Now therefore in consideration of the foregoing premises it is agreed as follows-*

- 1. The term 'territories of the agreement' or 'territories' shall mean and be limited to the following countries: Jamaica, the Bahamas, St. Kitts and Nevis, St. Vincent and the Grenadines, Barbados, Trinidad and Tobago, Grenada, St. Lucia, Guyana, Belize and Dominica.*
- 2. In consideration for royalties and other considerations hereafter stated or implied IFT hereby grants to CPL the right to use licensed inventions to make use and sell agglomerated products in the territories of the agreement only for the term of ten years.*
- 3. This instrument is the entire agreement between the parties and no modification shall be effective unless written and signed by both parties.*
- 4. For any products agglomerated by CPL pursuant to this licence and exported to any country other than the licensed territories, IFT or a party to be designated by IFT shall have the right of first refusal to be exclusive sales agent."*

Soon after this contract was entered into, CPL began manufacturing various products, pursuant to the licence, which they exported to the territories of the agreement.

In early 2014, having become aware of a lucrative market for its products in Suriname, St. Martin and Panama, CPL sought permission from IFT for their products to be sold in these countries and for IFT to act as their agent. But IFT denied permission for the products to be sold in those countries and referred to clause 2 of the contract.

CPL has now sought your advice in light of the contract they have with IFT.

What is your advice? Give reasons.

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### **QUESTION 3**

At about 5:00 p.m. on March 30, 2015, Police Traffic Inspector Dolly was riding her motor bike along Main Street when she saw a car, some distance ahead, travelling in a zig-zag manner. She therefore accelerated and overtook it. While overtaking the car she saw Rudi Appleton occupying the passenger seat but leaning over to his right with his hands on the steering wheel steering the car. Dolly then signalled him to stop which he did by banking the car. When Dolly looked inside the car she observed that the occupant of the driver's seat appeared to be sleeping with his head resting against the door.

Dolly then questioned Appleton and discovered that he was not the holder of a driver's licence. Appleton was therefore charged for driving without being the holder of a driver's licence and dangerous driving.

As a magistrate hearing the matter, it has been submitted by the prosecution that –

1. Under the Motor Vehicle and Road Traffic Act a driver is defined thus –  
“ ‘driver’ includes any person actually driving a motor vehicle at any given time and any person in charge thereof for the purpose of driving whenever the same is stationary on any road.”
2. The dictionary meaning of “drive” in the Oxford English Dictionary is “to urge onward and direct the course of, to guide a vehicle or the animal that drives it”; and in Chambers Twentieth Century Dictionary – “to urge along, to hurry on, to control or guide the movements or operations of”.

3. Driving, in reference to a motor vehicle, connotes both propulsion and direction. The steering wheel is as essential for driving as the gear stick, the accelerator pedal and the braking system. In law, any act may be done singly or jointly.
4. In the final analysis, it becomes a question of fact whether the person in charge has delegated to another the operation of any of the controls. In this case the driver delegated the driving to Appleton.

On behalf of Appleton it has been submitted that –

1. In the Insurance Act as well as the Road Traffic Act (U.K.) the definition of “driver” is as follows –

“ ‘driver’ where a separate person acts as a steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle.”

The omission therefore of any reference to a steersman in the Motor Vehicle and Road Traffic Act points with certainty to the conclusion that a steersman is not a driver;

2. In Marsh v Moores [1949] 2 K.B. 208, the authorized driver of a car sat in the passenger seat beside a person who had no driving permit but whom he allowed to drive. But he was ready, if necessary, to operate the handbrake. Lynskey J. said obiter that the authorized driver –

“... still retained the control and management of the vehicle. He still retained some power to control the driving of the vehicle by operating the handbrake and in instructing the other person as to how she should drive.

In these circumstances, it seems to me that he still remained the driver of the car”.

What is your judgment? Give reasons.

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#### **QUESTION 4**

Bill was charged with unlawfully making an anonymous telephone call to a woman, during which he used obscene, vulgar, lewd, lascivious and indecent language and threats. The prosecution conceded that Bill made no specific threats other than those inherent in words to the effect that he desired sexual intercourse with the woman he called. Subsequently, the magistrate dismissed the case, basing the dismissal on an interpretation of the statute that required both obscene language and threats as distinct elements of the crime.

The charging section reads –

*“No person shall engage in or institute a local telephone call, conversation or conference of an anonymous nature and therein use obscene, profane, vulgar, lewd, lascivious or indecent language, suggestions or proposals of an obscene nature and threats of any kind whatsoever.”*

The prosecution has appealed to the Court of Appeal, contending that the dismissal was based upon an erroneous interpretation of the statute. The phrase “of an obscene nature and threats of any kind whatsoever” should be read disjunctively.

Bill argues to the contrary. He claims that the legislature used the word “and” in order to restrict the scope of the statute so that in all cases there would have to be a threat.

Advise the prosecution. Give reasons.

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## **QUESTION 5**

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 6**

You act on behalf of the Commissioner of Income Tax. Andrew Young, a former government employee, is 66 years old and is the recipient of a pension from the government along with national insurance benefits and an approved pension from a previous employer. His total income from these sources is \$1.2M per annum. In January 2014, he claimed exemption under section 12 of the Income Tax Act, but the claim was rejected by the Commissioner of Income Tax.

Section 12 provides as follows –

*“12. There shall be exempt from tax ...*

- (a) As regards the year 2012 and any subsequent year of assessment,*
  - (i) \$450,000 of the income of any individual derived from a superannuation allowance or pension under either a statutory pension scheme or a scheme for payment from a superannuation fund approved by the Commissioner pursuant to Section 44A; or*
  - (ii) If the individual referred to in sub-paragraph (i) of this paragraph has attained the age of 55 years or is found to be permanently incapacitated as described in paragraph (y) of this section, \$450,000 of his income derived from any of the sources referred to in sub-paragraph (i) aforesaid and from any other source;*
- (b) As regards the years 2012 and any subsequent year of assessment, \$450,000 of the income of an individual who has attained the age of 65 years or attains that age at any time during the year of assessment.*

*Provided that nothing in this section shall be construed to exempt, in the hand of the recipients, any payments other than those referred to above made wholly or partly out of the income so exempted.”*

In their letter of rejection to Young, the Commissioner of Income Tax said *inter alia* –

*“The relevant paragraphs in section 12 of the Act are mutually exclusive and so you are entitled to claim under one or the other but not both”.*

Young then appealed the decision.

The judge hearing the appeal held that –

*“(i) section 12 (a) and 12 (b) do not stand on their own and are not mutually exclusive and persons who qualify under paragraph (a) are entitled to the full exemption granted under that paragraph and upon reaching the age of 65 are also entitled to the further exemption granted by paragraph (b).*

*(ii) In arriving at my decision, I am guided by the judgment of Mr. Justice Rowlett in Cape Brandy Syndicate v C.I.R. 12 T.C. 366 where he said:*

*‘Now of course it is said and urged by Sir William Finlay that in a taxing act clear words are necessary to tax the subject. But it is often endeavoured to give that maxim a wide and fanciful construction. It does not mean that words are to be unduly restricted against the Crown or that there is any discrimination against the Crown in such Acts. I think, it means that in taxation you have to look simply at what is clearly said. There is no equity about a tax. There is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and what is said clearly and that is the tax.’”*

The Commissioner of Income Tax wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

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### **QUESTION 7**

Your client, Simon Simple, lives adjacent to a large undeveloped lot of land, owned by him. He recently returned home from a six-month visit with his children in England, to see the lot of land cleared, divided into lots, roads put in and light and water in place. Other developments were also in progress.

He immediately went on to the land and spoke to the person who appeared to be in charge of the site. That person informed him that the development was being carried out by Mr. Alexander Mansmart. Later that day, on visiting his bank, he discovered that his account was being used to finance the development.

The following day Simon visited Mansmart who is his son-in-law. Mansmart expressed great surprise that Simon was angry at what was taking place. Mansmart then showed the Power of Attorney, set out below, with his (Simon's) signature. The Power had been duly stamped and registered/recorded.

**“POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS THAT I, SIMON SIMPLE** of ‘Lily Cottage’, Queenstown, Pensioner, **HEREBY APPOINT ALEXANDER MANSMART** of Clover Leaf Drive, Queenstown, Real Estate Developer, to be my true and lawful Attorney for me and in my name and for my use to act and conduct and manage all affairs as he may think fit with powers to execute documents of all kinds, to commence prosecute or compromise legal proceedings or arbitration of all kinds to compromise claims of all kinds to sell transfer or do any other act concerning any and all dower rights, claims and title which I may possess and to transfer the same in any manner concerned by any corporation company or otherwise prescribed by law and to enter into or to take possession of any or all lands and to receive and take for me and in my name to my use all or any rents profits or issues of real estate belonging to me and let the same in such manner as my attorney shall deem needful and proper.

*The power hereby given to my Attorney shall be given the widest interpretation and shall be construed as an express authority to him to act and deal with my affairs as fully and effectually as I myself could do.*

*This Power of Attorney shall be irrevocable for one year.*

*Any act or thing done after revocation hereof by my death shall be valid unless notice in writing of such revocation has been made public.”*

Advise Mansmart as to the validity of the actions taken under the Power of Attorney.

## **QUESTION 8**

Danny Spender, a popular businessman and philanthropist, was recently charged and found guilty under section 10B of the Forfeiture of Proceeds of Drug Trafficking Act for being in possession of property derived from the proceeds of drug trafficking. The Act was amended in 2014 to include section 10B.

Section 10B of the Act provides as follows –

*“10B (1) It shall be an offence for a person to be in possession of property derived from the proceeds of or the participation in drug trafficking.*

*(2) In this section references to any person’s property as being derived from the proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands the proceeds of drug trafficking.”*

The evidence before the court was that Spender owned substantial real and personal property, but had no known legitimate source of income. In addition, in 2008, he had been charged and found guilty of cultivating ganja, an offence included in the definition of drug trafficking under the Act.

Spender’s counsel had submitted before the court that his client has been improperly charged in that the property referred to in the charge was acquired before 2014. In addition, that to apply the amending Act to him, would be in breach of Spender’s constitutional rights and specifically, section 15 of the Constitution which provides –

*“15. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not at the time it took place constitute such an offence.”*

The judge, in rejecting this submission, said –

*“I appreciate the force of the submission that the term ‘drug trafficking’ as a term of art (so used in the Act) did not exist until the amending Act became law. Nonetheless, each of the elements set out in the Act as constituting drug trafficking had, prior to the enactment of the law, been an offence and would have been understood in ordinary language as an activity comprised in the concept of drug trafficking. The nature of property as property obtained by drug trafficking attaches to it from the moment of its acquisition and remains unchanged. Making possession of such property subject to legal sanction is not in my view, retrospective legislation.”*

Spender wishes to appeal this decision and has sought your advice.

Advise Spender. Give reasons.

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**END OF PAPER**