

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2014

LEGAL DRAFTING & INTERPRETATION

(FRIDAY, MAY 23, 2014)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Mr. Vaughn Wood has come to see you. He tells you that proceedings have been brought against him under the Dogs (Liability for Injuries By) Act for injuries committed by a pit bull dog owned or harboured by him. He tells you that he does not own the dog, nor did he harbour him and that in fact the dog was owned by a former employee, Tony, who had lived in the caretaker's cottage on the property. When Tony left his employment he left the dog behind with his (Wood's) son, to be sent for as soon as Tony was able to find suitable accommodation for himself and the dog.

He further tells you, that he told his son that he was not happy with this arrangement because of the reputation that pit bulls have and that if Tony did not send for the dog within the next two weeks, he was to take the dog to the animal shelter. Before this time had passed, however, the dog escaped on to the roadway and bit a young woman, hence the action being brought against him. He now seeks your advice as to whether the action is sustainable against him.

The Dogs (Liability For Injuries By) Act provides as follows:

“2. The owner of every dog shall be liable in damages for injury done to any person, or any cattle or sheep by his dog, and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity or that the injury was attributable to neglect on the part of such owner. Such damages shall be recoverable in any court of competent jurisdiction by the person injured, or by the owner of such cattle or sheep killed or injured.

3. The occupier of any house or premises where any dog was kept, or permitted to live or remain at the time of such injury shall be deemed to be the owner of such dog, and shall be liable as such, unless the said occupier can prove that he was not the owner

of such dog at the time the injury complained of was committed, and that such dog was kept or permitted to live or remain in the said house or premises without his sanction or knowledge.

Provided always, that where there are more occupiers than one in any house or premises let in separate apartments, or lodgings, or otherwise, the occupier of that particular part of the premises in which such dog shall have been kept or permitted to live or remain at the time of such injury, shall be deemed to be the owner of such dog."

Advise Mr. Wood.

QUESTION 2

Alert Jones and his wife, Firefly, attended a carnival soca jam where he became drunk. Firefly, however, had no alcohol to drink and was cold sober. At about 4:00 a.m after the party, they set off for home with Firefly driving the car while Alert sat in the front seat making a great deal of noise and singing lustily. While on the highway, they were stopped by a policeman and Alert was charged with being intoxicated in a public place, contrary to section 5 of the Road Traffic (Intoxicated Drivers) Act.

Section 5 of the Act provides –

"5. No person shall be in an intoxicated condition in any public place."

Section 2 of the same Act defines "public place" as including inter alia -

"(a) a highway, road, street, lane or other thoroughfare;

(b) a conveyance while it is at, in or on any place that by virtue of paragraph (a) of this section is a public place."

The magistrate, before whom the matter was heard, acquitted Alert, holding that the word “conveyance” in the statute meant a public conveyance and did not include a privately owned motor car.

He further stated that it was his view that the purpose of the Act was to prevent persons from driving while intoxicated and this was supported by the Short Title to the Act. It was also to protect users of public conveyances from possible nuisance by persons who were intoxicated, and it would be an absurdity that a person should be convicted of an offence when he has taken all reasonable precautions to ensure that he and his car would be driven on the highway safely and without risk of injury to others. He then cited the dictum of Lord Blackburn in **River Wear Commissioners v Adamson (1877) App Cas. 746; 764** –

“...that we are to take the whole statute together and construe it all together giving the words their ordinary significance unless when so applied they produce an inconsistency or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification.”

As Director of Public Prosecutions/Attorney General would you appeal this acquittal (a procedure permitted by the jurisdiction)?

Give reasons for your decision.

QUESTION 3

Since February of this year (2014) your client, Bin Rose, has had his Sunday morning sleep interrupted by the noise from a power mower and hedge trimmer being used by his neighbour across the street, Hy Wildblood.

Wildblood, who moved into the neighbourhood in February, has insisted on mowing his lawn and trimming the hedges in his garden every Sunday morning, beginning at about 6:00 a.m. Even during the current drought period he has done so.

Repeated requests by Rose, for Wildblood to desist from this activity so early in the morning, or to attach a silencer to the mower, have fallen on deaf ears.

In mid-April (2014) Rose attended a function that went on early into Sunday morning and which saw him getting home at 5:00 a.m. True to form, at 6:00 a.m., Wildblood started up his mower and began mowing a very parched lawn.

The noise startled Rose who had just fallen asleep. He jumped out of bed, and clad only in shorts, raced across the street and accosted Wildblood. He then said to him, “Yow, if you don’t stop mowing your lawn in two minutes I will beat you up and break every bone in your body”. Rose then returned to his house. Shortly thereafter, Wildblood shut off the mower. Later on that same day, Rose went over to Wildblood’s house and shouted that if Wildblood ever attempted to mow on any Sunday morning again he would beat him up.

On the following Monday, Wildblood’s attorney-at-law laid a charge under section 31 of the Criminal Offences Act against Rose. Section 31 states as follows:

“31(1) Every one commits an offence who by letter, telegram, telephone, cable, radio or otherwise, knowingly utters, conveys or causes any person to receive a threat to cause death or injury to any person.”

The matter was heard last week and Rose was found guilty as charged. The judge in giving his judgment said that he was of the view that section 31 included face-to-face threats and the case of R v Wallace (1970) 74 WWR 763 was authority for this position.

Rose wishes to appeal this conviction and has sought your advice.

Advise him. Give reasons.

QUESTION 4

Your client, Ambassador Wyatt Earp, a diplomat serving at the Embassy in Washington, U.S.A. but home on leave in April (2014), had applied to the police officer in charge of the parish of St. John, for a firearm licence. St. John is the parish in which Ambassador Earp normally resides when in his country.

Section 6 of the Firearms Act provides –

“6. An application for the grant of a firearm or shotgun licence shall be made in the prescribed form to the police officer in charge of the parish in which the applicant resides and shall state such particulars as may be required by the form.”

Ambassador Earp owns a house in St. John's but he has let it for the duration of his tour of duty overseas.

The senior superintendent of police in charge of St. John's, however, refused his application on the ground that he did not reside within the parish. Ambassador Earp therefore appealed to the magistrate's court requesting that the court reverse this decision.

The magistrate, however, upheld the refusal of the senior superintendent of police and gave his reason as follows –

“The point which troubled the superintendent and which led him to refuse the application was that in his view Ambassador Earp did not reside in the parish. At the time of the application he had let his house and it must follow that, subject to any covenant that there may be in the tenancy permitting the landlord to inspect and make sure that the tenant was not breaking the place up, he had no right to occupation.

It was said by Ambassador Earp that section 6 should receive a wide construction as it has only an administrative purpose, namely to identify the relevant person, to deal with an application.

I think there is force in that submission, but I cannot get away from the fact that the legislature has decided that in general no one shall possess a firearm unless they are authorized in accordance with the procedures laid down by the legislature. The legislature could have said that anybody who has a residential

base or anybody who owns a property could apply where that property is located, but it did not.

What Ambassador Earp suggested was that 'resides' in this context was the place with which you have a residential connection at the present time or have had such a connection in the past, coupled with an intention to reside at that place in the future. That would certainly get over the problem which affects him and I am bound to say that I would like to assist Ambassador Earp because it seems to me that if the legislature has made it impossible for a diplomat serving overseas to obtain a firearm licence, it must be because those concerned never applied their minds to the problem, for I am sure they would have made provision for it.

*I am not averse to applying a broad construction in order to remedy any deficiencies in an Act of Parliament which would be apparent if one applied a broad construction as proposed by Lord Denning in Nothman v Barnet LBC [1978] 1 WLR 222, but there are limits to that and here I feel bound by the rule *Expressio Unius*."*

Ambassador Earp wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

The Secretary of Thrifty Members Credit Union, Ms Para Legal, has written to you as follows:

“Dear Attorney,

A problem has arisen involving different interpretations being given to rule 42 of our new rules. This rule states as follows:

“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 this rule means that decisions of this nature must be by a majority vote of at least three-fourths of the total membership of the Board. The Board consists of fifteen Directors. 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. This was so because there were less than twelve Directors present at a meeting or that less than twelve members, 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 this would mean the favourable vote of less than twelve Directors, if the attendance is 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 advice at your earliest convenience as this is a matter of great urgency.”

Advise the credit union.

QUESTION 6

Your client, Julie Wints, seeks your advice in relation to the following matter. She presents you with a properly executed and registered/recorded Power of Attorney, the body of which reads as follows:

“Power of Attorney

A POWER OF ATTORNEY given on the 5th day of August, 2012 by me, ASH FLAVA, of 10 Whether Close, Davie, Florida, U.S.A., Businessman.

WHEREAS I am presently ill and seeking medical treatment in the U.S.A., and therefore I am unable to manage my business affairs

AND WHEREAS it is desirable that an Attorney be appointed on my behalf in that regard

NOW THIS DEED WITNESSETH that I appoint JULIE WINTS of 25 Stayforth Mews in [local jurisdiction], Technician, to be my Attorney, for me and in my name to do and execute the following acts, deeds and things –

- 1. To manage my business affairs in such manner as the Attorney shall think fit, and make any payments in connection with my said business affairs.*
- 2. To commence, carry on, prosecute, defend or discontinue all actions and other proceedings touching any aspect of my business affairs.*
- 3. To carry into effect and perform all agreements entered into by me with any other person.*
- 4. Generally to do and perform all such further acts, deeds and matters of whatever kind in relation to any aspect of my property or affairs as fully and effectually in all respects as I myself could do if personally present.*

AND I HEREBY UNDERTAKE to ratify everything which my Attorney shall do or purport to do by virtue of this Power of Attorney.”

Julie Wints, the Attorney appointed under the Power of Attorney, instructs you as follows:

- (a) Ash Flava (Flava) owns a barber salon in the local jurisdiction, and employs a number of workers in the business. Wints has been managing the affairs of the salon since her appointment, but the sharp economic downturn in the country has so severely affected the cash flow of the business that she will soon be unable to pay salaries to staff.

Wints now wants to approach a local financial institution to borrow funds to meet the cash shortfall, using the premises on which the salon is located as security. She is of the view that numbered paragraph 1 of the Power of Attorney authorises this course of action.

- (b) Flava had been romantically involved with Dana Lomez, who had moved into his home and lived with him as his common law spouse for three years. However, the relationship then deteriorated, and she had left the home. Now that Flava is abroad seeking medical attention, Lomez has returned to the home and refuses to leave.

Having learnt of this latest development, Flava is livid, and wants Wints to take legal action to evict Lomez from his property. Wints believes that numbered paragraph 4 of the Power of Attorney entitles her to take such action.

Advise Wints whether the Power of Attorney confers on her the authority to take the measures indicated in relation to situations (a) and (b).

QUESTION 7

Penelope has just completed a Legal Drafting Course and is eager to demonstrate her recently acquired skills. The following provisions appeared in a draft lease that she was asked to redraft:

***"DAMAGE TO PREMISES.** The LESSEE covenants and agrees that the premises hereby leased and the fixtures of same shall be kept in good repair; that LESSEE shall pay for all repairs required to be made to the floors, walls, ceilings, paint, plumbing work, fixtures or any other part of the leased premises as aforesaid*

whenever damage or injury to same shall have resulted from any misuse or neglect on the part of the LESSEE; that rented premises shall be used only as a family dwelling. LESSEE shall not perform any repair on appliances or equipment of LESSOR but said repair shall be done only by LESSOR'S employees, contractors or agents, and LESSEE agrees to notify LESSOR accurately and promptly of any problem arising from aforesaid equipment if possible. LESSEE agrees to allow repairmen to enter leased premises to remedy said problems. Locks may not be changed without written permission. PROVIDED THAT the LANDLORD shall not be responsible or liable to the Tenant or any other person claiming by or through Tenant, for any injury or damage resulting from bursting or leaking of any pipes; nor for any damage or injury arising from the acts or neglect of co-tenants, their families or guests. No outside or attic aerials or antennae will be permitted on the building or premises. LANDLORD and/or his representatives may enter the leased premises at any reasonable time to make such repairs as may be deemed necessary by LESSOR for the safety and preservation of the premises."

Penelope's redraft was as follows –

"Damage to Premises:

- (1) Lessee shall take good care of the premises and the fixtures.*
- (2) Lessee shall pay for all repairs required to be made to any part of the premises, whenever the damage results from any misuse on the part of the Lessee.*
- (3) Lessee only shall use premises as a family dwelling.*
- (4) Lessee shall:*
 - (a) not perform any repair to Lessor's appliances or equipment;*
 - (b) notify Lessor of any problem with appliances or equipment;*

- (c) *allow repairmen to enter the premises to remedy the problem;*
- (d) *lessor shall perform the repair;*

(5) *The Lessor:*

- (a) *is not liable to Lessee for any injury or damage resulting from –*
 - (i) *the bursting or leaking of any pipe;*
 - (ii) *the acts or neglect of co-tenants, their families or guests.*
- (b) *may enter the premises at any time to make necessary repairs.”*

Comment on the adequacy or otherwise of Penelope’s redraft.

QUESTION 8

Honest Abe consults you. He tells you that his brother, Shady, has been and still is his principal benefactor. He (Abe) is a third year medical student of the university whose fees have been paid by Shady since his first year. In addition, Shady bought him a one-bedroom apartment in a complex near to the university. The registered title to the apartment is in his (Abe’s) name. Finally, his car, a Toyota Yaris, was purchased by Shady two years ago and is also registered in his (Abe’s) name.

All of these gifts were given to Abe, as he is the only member of the family, so far, to qualify to attend university and more so because his mother died when he was eight years old and his father never accepted responsibility for him.

Abe's concern, however, arises from the fact that Shady has strong connections with the underworld, and it is rumoured that his wealth has been acquired by illegal means as he has no identifiable and legitimate means of employment. Recently, Shady was advised by a senior police officer that as soon as the Illegal Acquisition of Assets Act is brought into effect, the police will be "coming after him". The Act comes into effect on July 1, 2014.

Section 8 of the Illegal Acquisition of Assets Act provides inter alia –

"8 (1) A Court shall, upon the application of the Director of Public Prosecutions, act in accordance with subsection (2) if the Court is satisfied that a defendant is –

- (a) convicted of any offence in proceedings before the Court; or*
- (b) committed to the Court pursuant to section 52 (committal from a Resident Magistrate's Court with a view to making forfeiture order or pecuniary penalty order).*

(2) The Court shall –

- (a) determine whether or not the defendant has a criminal lifestyle and has benefitted from his general criminal conduct;*
- (b) if the Court determines that the defendant does not have a criminal lifestyle, determine whether or not the defendant has benefitted from his particular criminal conduct; and*
- (c) identify any property used in or in connection with the offence concerned and make an order that that property be forfeited to the Crown.*

(3) *Where pursuant to subsection (2) the Court determines that the defendant has benefitted from criminal conduct, the Court shall identify the property that represents the defendant's benefit from criminal conduct, and –*

(a) make an order that the property be forfeited to the Crown; or

(b) order the defendant to pay to the Crown an amount

(hereinafter referred to as “the recoverable amount”) equal to

the value of his benefits.

(4) *Where the Court is satisfied that a forfeiture order should be made under this section but that the property or any part thereof or any interest therein cannot be made subject to such an order, and, in particular -*

(a) cannot, on the exercise of due diligence, be located;

(b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;

(c) is located outside the country;

(d) has been substantially diminished in value or rendered

worthless; or

(e) has been commingled with other property that cannot be

divided without difficulty,

the Court may, instead of ordering forfeiture of the property or part thereof, or interest therein, order the defendant to pay the Crown an amount equal to the value of his benefits.”

Abe has therefore sought your advice as to whether he could be affected by this new legislation.

Advise Abe. Give reasons.

END OF PAPER