

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2015

LEGAL DRAFTING & INTERPRETATION

(FRIDAY, MAY 22, 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Mr. John Newspaper comes to see you. He tells you that he is the owner of the Daily Reporter, a newspaper which has been in existence since 1898 and which he inherited from his grandfather.

The newspaper has been a daily newspaper from its inception and has always contained both news and remarks thereon as well as advertisements, the last representing about 50% of the contents of the paper. It has always been sold.

He further tells you that when the Newspaper Act became law three weeks ago, the editor and business manager requested personal information from him with respect to his full name and nationality which they said were required by the Act. He, however, refused to give them this information, and further expressed the view that the Act did not apply to his newspaper as it did not fall within the definition of “newspaper” in the Act. His newspaper contained both news and advertisements and was sold to the public.

On further reflection, however, he decided to seek legal advice.

The Newspaper Act states as follows:

- “1. This Act shall be cited as the Newspaper Act.*
- 2. In this Act “newspaper” means: Any paper containing public news, intelligence or occurrences, or any remarks or observation thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers, and any paper printed in order to be distributed and made public weekly or oftener, or at intervals not exceeding twenty-six days and containing only, or principally advertisements.*

3. *It shall be the duty of the proprietor, of the editor and of the business manager and of each of them, of every newspaper being published, to file with the Clerk of the Court within one month from the date of the passing of this Act, a declaration under oath or affirmation (in case where by law affirmation is allowed) setting forth the name in full of the proprietor, editor, and business manager of such newspaper, his nationality, both by birth and allegiance, the place of publication of such newspaper, and the name or title under which such newspaper is published, and any proprietor, editor or manager neglecting to comply with the provisions of this Act shall, upon summary conviction, before a Justice of the Peace, be liable to a fine not exceeding five hundred dollars and not less than fifty dollars for each day during which such neglect continues.*
4. *In the case of newspapers to be hereafter established, the declaration mentioned in section 3 of this Act shall be filed with the Clerk of the Court before such newspaper is published and each and every, the proprietor, editor, and business manager of such newspaper shall upon summary conviction before a Justice of the Peace, be liable to a fine not exceeding five hundred dollars and not less than fifty dollars and each issue of such newspaper shall be deemed to constitute a fresh offence against the provisions of this Act.”*

He wishes your advice as to whether -

- (i) the Newspaper Act applies to his newspaper; and if it does
- (ii) he is required to give his personal information to the editor and business manager?

QUESTION 2

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

- “10. A police 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 suspect 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.”*

Your client, Hamlin Pope, owns and operates a small grocery store. Last week while he was in the store, a police officer entered and told Pope that 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 Pope. Pope objected and forcibly ejected the police officer from the store and locked the door.

A charge of resisting a police officer in the lawful execution of his duty was then laid against Pope. At the trial, the police officer admitted on cross-examination that he had no grounds whatever to believe that Pope had any prohibited drugs in his store or on his person, but stated that he did not need a warrant to search the premises.

The magistrate hearing the matter then found Pope guilty of resisting the police as charged.

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

What is your advice? Give reasons.

QUESTION 3

The accused, Tom Winehead, was charged with the offence of unlawfully having liquor in a vehicle contrary to section 5 of the Liquor Control Act.

The evidence before the magistrate disclosed that on October 5, 2014, at about 9:00 p.m., on his way home, Winehead, who was a taxi driver, drove to the supermarket in his taxi and purchased a bottle of rum which he placed in his taxi for the purpose of driving to his home and leaving the rum there. He had no passengers in the taxi.

Before he reached home, however, he was stopped by the police in a road block. The rum was found in the taxi, and the charge referred to above was laid.

The taxi is a vehicle defined in the Vehicles Act, and the accused's home is a place where liquor may be lawfully consumed.

Section 5 of the Liquor Control Act states –

“(1) Subject to subsection (2) ... no person by himself, his servant or agent shall have or keep or consume liquor in a vehicle as defined in The Vehicles Act.

(2) Subsection (1) does not render it unlawful to have liquor in such a vehicle for the purpose of transporting the liquor from the store or from the outlet ... at which it was purchased to a place where it may be lawfully had or kept or consumed or from such a place to another place where liquor may be lawfully had or kept or consumed.

(3) Subsection (2) does not apply with respect to liquor being transported in a vehicle used for carrying passengers for hire or gain unless the liquor is in the possession of a person who is a bona fide passenger in the vehicle.”

The magistrate found Winehead not guilty and stated that in interpreting section 5(3), he was of the view that the word “while” had been omitted from the second line of that subsection and that it should be inserted between the words “vehicle” and “used”. To do otherwise, he said, would be to produce an absurd result.

He further cited as authority for this approach the dictum of Lord Blackburn in *River Wear Commissions v Adamson* [1877] AC 743 where he said:

“I believe that it is not disputed that what Lord Wensleydale used to call the golden rule is right viz we are to take the whole statute together and construe it all together giving the words their ordinary signification 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 and to justify the court in putting on them some other signification which though less proper is one which the courts think the words will bear.”

As Director of Public Prosecutions/Attorney General, would you appeal this decision? (Assume for the purpose of this question that the Director of Public Prosecutions/Attorney General has a right of appeal). Give reasons.

QUESTION 4

John Snow, a barber and hairdresser, carried on his business in a room attached to his house where paying customers came to be shaved or have their hair cut. He employed a young assistant who assisted him in shaving customers. John Snow carried on no other business and no articles were bought or sold on the premises.

On Sunday, February 22, this year (2015), John Snow shaved and cut the hair of several customers, for reward, as he had done almost every Sunday for the last twenty years. On this Sunday, however, he was charged with carrying on the trade of barbering and hairdressing upon the Lord's Day, contrary to section 2 of the Sunday Observance Act.

Section 2 provides as follows –

“No tradesman, craftsman, workman, labourer or other person shall do or exercise any worldly labour, business or work of their ordinary callings upon the Lord's Day or any part thereof (works of necessity and charity only excepted) and that every person so offending shall for every such offence forfeit the sum of One Thousand Dollars.”

Before the court it was submitted on behalf of the prosecution that John Snow's activities came within the words of the section. The section was intended to strike at persons exercising “handy labour” on Sunday, and that John Snow did work with his hands in shaving and cutting

the hair of his customers. Further, a barber is a tradesman. He carries on the trade of shaving and haircutting in the same way as a carpenter or a blacksmith carries on the trade of carpentering or shoeing horses.

For the defence it was submitted that John Snow is not a tradesman, craftsman, workman or labourer or other person within the meaning of the section. He is not a tradesman because that word is used in the ordinary sense of a person who buys and sells. A barber is not a craftsman which denotes a skilled workman who makes something. He is not a workman or labourer because those words are intended to cover persons in the employment of others. Finally, he does not come within the words "or other person" since those words ought to be restricted to those previously specified.

John Snow was found guilty and fined \$1,000. He wishes to appeal this decision and has sought your advice.

Advise him. Give reasons.

QUESTION 5

Your client, Ray James, was convicted on a charge of attempted murder after he shot his neighbour, causing him serious bodily injury. As a result of information he gave to the police officer in charge of the investigations, and during the course of such investigations, the gun which James used to commit the offence was found buried near his residence.

During the trial, James' attorney-at-law objected to the admission of the evidence with respect to the gun, on the ground that it had been improperly admitted contrary to section 22 of the Criminal Procedure Code 1998. But the trial judge overruled this objection and stated that the evidence was admissible under section 17 of the Evidence Act 1996.

Section 17 of the Evidence Act provides as follows –

“17(1) No confession made to any police officer shall be proved as against a person accused of any offence.

(2) No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a magistrate shall be proved as against such person.

(3) Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer so much of such information whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved.”

On the other hand, section 22 of the Criminal Procedure Code provides as follows –

“22. No statement made by any person to a police officer or an inquirer in the course of any investigation under this Act shall be used otherwise than to prove that a witness made a different statement at a different time or to refresh the memory of the person recording it. But any criminal court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information not as evidence in the case but to aid in such inquiry or trial.”

Since the trial, James has dismissed his attorney-at-law and has now sought your advice as to whether he should appeal his conviction.

What is your advice? Give reasons.

QUESTION 6

Jennifer Bright, a recent graduate of the Law School and winner of the drafting prize, has recently joined the drafting department of the government service. The department is currently redrafting some of the old legislation and has instructed Jennifer to redraft the Quarantine Act, 1845.

The original Act is as follows:

“Quarantine Act

- 1. All boats, ships and vessels coming into the Port of St. Johns or into the Harbour of Bridgetown which shall have at the time of their said arrival or shall have had during their passage from the places where they respectively cleared, any person on board labouring under Asiatic cholera, fever, smallpox, scarlatina or measles or other infectious and dangerous disease, or on board of which any person shall have died during such passage, or which being of less tonnage than seven hundred tons measurement, shall have on board thirteen or more steerage passengers, or which, being of greater tonnage than seven hundred tons measurement, shall have on board fifty or more steerage passengers, or which shall have come from some infected port, shall make their quarantine in the said harbours respectively on board such vessels or at such place or shore and in such manner as directed by the Inspecting Physicians of the said harbours respectively and there remain and continue until such ship or vessels shall be discharged from such quarantine, by such licence or passport, and discharge given without fee or emolument of any kind, as shall be directed or permitted by such order or orders as shall be made by the Governor, and until the said ships and vessels shall respectively have performed such quarantine and*

shall be discharged therefrom by such licence or passport and discharge as aforesaid, persons, goods, or merchandise, which shall be on board such boats, ships or vessels, shall not come or be brought on shore, or go or be put on board of any other ship or vessel except at such place indicated as aforesaid when duly required by competent authority.”

Jennifer’s redraft is as follows-

“Quarantine Act

1. *In this Act –*

“suspected vessel” means a vessel coming into the Port of St. Johns or into the Harbour of Bridgetown that-

- (a) has at the time of its arrival or has had during its passage from the places where it was cleared, any person on board labouring under Asiatic cholera, fever, small-pox, scarlatina or measles or other infectious and dangerous disease,*
- (b) being of less tonnage than seven hundred tons measurement, has on board thirteen or more steerage passengers, or, being of greater tonnage than seven hundred tons measurement, has on board fifty or more steerage passengers, or*
- (c) has come from some infected port, or on board of which any person has died during such passage.*

2. *Every suspected vessel shall make quarantine in the harbour at which it arrives, and every person on board the vessel shall remain in*

quarantine, on board the vessel or at such place on shore and in such manner as the Inspecting Physician at the harbour where the vessel arrives may direct, until the vessel is discharged from quarantine by a licence or passport issued by the Inspecting Physician in such form as the Minister directs.

3. *Until a vessel has performed its quarantine and is discharged therefrom, persons, goods or merchandise that are on board the vessel shall not*

- (a) come or be brought onto shore; or*
- (b) go or be put on board any other vessel,*

except at the place indicated by the Inspecting Physician when required by him.”

Comment on the adequacy or otherwise of Jennifer’s draft.

QUESTION 7

Your client, Knocks Hardy, has been appointed an attorney under the following power of attorney –

“POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY given on the 5th day of December Two Thousand and Fourteen WE ANDREW AND KARLENE GLASS of Marigold Place, Apartment 5, St. Thomas, US Virgin Islands, Restaurateur and Hotelier respectively, appoint KNOCKS HARDY of “Sunshine Villa”, Swan Street, Bayview, Chef, our Attorney for and in our name to do and execute all or any of the following acts deeds and things that is to say:

1. *To manage our restaurant, business affairs, investments, securities and personal property for the time being in such manner as the Attorney shall think fit and make any payments in connection with our restaurant, business affairs, investments, securities and personal property.*
2. *To lease our apartment located at “Moonbeam Apartments”, Bayview, without the furniture therein.*
3. *To commence carry on or defend all actions and other proceedings touching our property or affairs or any part thereof or touching anything in which we or our property or affairs may be in anywise concerned.*
4. *To settle compromise or submit to arbitration all accounts claims and disputes between us and any other person or persons.*
5. *To sell our motor cars by public auction to the highest bidder.*
6. *To carry into effect and perform all agreements entered into by us with any other person or persons.*
7. *Generally to act in relation to our property and affairs and to this deed as fully and effectually in all respects as we could do.*

AND WE HEREBY UNDERTAKE *to ratify everything which our attorney or any substitute or substitutes or agent or agents appointed by him under the power in that behalf hereinbefore contained shall do or purport to do by virtue of this Power of Attorney.”*

The instrument was properly executed and registered/recorded.

Knocks now seeks your advice with respect to a number of things he proposes to do under the power. He tells you that –

- (i) the restaurant owned by the grantors, which is in a busy commercial area and which sells local dishes, is losing money. However, an overseas “fast food” company is interested in entering into a joint venture with him to operate the restaurant;

- (ii) he has identified a car dealer who wants to purchase the motor cars and wishes to sell them to the dealer by private sale;
- (iii) he has identified a lessee for the apartment but has nowhere to store the furniture and therefore proposes selling the furniture; and
- (iv) he wishes to operate the grantors' bank account at First Bank.

What is your advice? Give reasons.

QUESTION 8

Josh Jones was charged on April 5, 2013 with the murder of Don Spackman, and an information/complaint laid on the same day. Spackman died on March 1, 2013, after he sustained fatal injuries at the hand of Jones.

The evidence before the court was that on the early morning of March 1, 2013, Jones and Spackman were involved in a fight outside a casino. Provocative words were used by Spackman to Jones who reacted by stabbing Spackman in the neck with a knife. Spackman then fell to the ground and bled from his neck, nose and mouth. He was taken to the hospital where he was pronounced dead on arrival.

A preliminary enquiry/committal proceedings for murder commenced on June 15, 2013 and on July 10, 2013, Jones was committed to stand trial for the lesser offence of manslaughter.

The trial commenced on February 1, 2015, and on February 27, 2015, the judge withdrew the case from the jury as a result of evidence given by the pathologist as to the cause of death and directed a verdict of acquittal.

On February 12, 2015, by virtue of the Court of Appeal Judicature (Amendment) Act, sections 20C and 20D were inserted into the Court of Appeal Judicature Act, which for the first time gave the Director of Public Prosecutions (DPP) a right of appeal.

The Court of Appeal Judicature (Amendment) Act 2015 provided as follows –

“The Court of Appeal Judicature Act is amended by inserting after Section 20B the following as Sections 20C and 20D –

20C. The Director of Public Prosecutions may appeal to the Court of Appeal against a judgment or verdict of acquittal of a trial court in proceedings by indictment when the judgment or verdict is the result of a decision by the trial judge to uphold a no case submission or withdraw the case from the jury on any ground of appeal that the decision of the trial judge is erroneous in point of law.

20D. On appeal from an acquittal the Court of Appeal may-

- (a) dismiss the appeal; or*
- (b) allow the appeal, set aside the verdict and order a new trial.”*

The DPP, pursuant to the amended provisions in the Court of Appeal Judicature Act, wishes to appeal against the decision of the trial judge. He has therefore sought your advice as an attorney-at-law in his chambers as to the relevant date in determining whether the 2015 amendment applies to his right of appeal.

Advise the DPP. Give reasons.

END OF PAPER