

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS, OCTOBER 2014

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, OCTOBER 3, 2014)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Under the Public Servants (Pensions) Act, a public servant upon his retirement from the public service, was entitled to elect one of several prescribed superannuation allowance plans.

Gaylin Bates retired from the public service in 1999. Though married at the time, rather than elect the joint life and survivor plan he elected the single life plan, which provided a pension for ten years or as long as he lived, whichever was longer.

In 2009, The Public Servants (Pensions) (Amendment) Act was passed and provided as follows –

12. Where a public servant is married on the date he elects a superannuation allowance plan, he shall be deemed to have elected that 60% of his superannuation allowance be paid on a joint life and last survivor plan unless the spouse waives this requirement in writing.

On a joint life and last survivor plan, the superannuation allowance would continue to be payable to a surviving spouse.

Gaylin Bates died last month. Mrs. Bates has written to the Commissioner of Pensions requesting him to invoke section 12 so that she could continue to receive her husband's pension.

The Commissioner is of the view that section 12 does not apply in Mrs. Bates's circumstances and has sought your advice.

Advise the Commissioner.

QUESTION 2

Verde and Amarillo, attorneys-at-law, are in the process of updating their precedents. They have recently employed a young attorney-at-law, Anna Blanco, to assist in this task.

One of the instruments being re-drafted is a residential lease. Amongst the covenants to be re-drafted by Anna were the following –

2. *The Tenant HEREBY COVENANTS with the Landlord in manner following (that is to say): -*

(a) To pay the several rents and sums hereby reserved at the time and in the manner at and in which the same are hereinbefore reserved and made payable without any deduction.

(b) If any monies payable by the Tenant to the Landlord under this or any other covenant or provision of this Lease shall be due but unpaid for fourteen days to pay on demand to the Landlord interest at a rate equal 3% above the base rate for the time being of Scot Bank Limited such interest to be calculated daily from that date when such monies were due until the date such monies are received by the Landlord or the duly authorized agent both dates inclusive.

4. *Any certificates demand for payment or notice requiring to be made upon or given to the Tenant shall be well and sufficiently made or given if sent by the Landlord or their agents through the post by registered letter addressed to the Tenant at the demised premises or left for the Tenant at the demised premises and any notice required to be given to the Landlord shall be well and sufficiently given if sent by the Tenant through the post by registered letter addressed to the Landlord at the registered office or usual or last known place of business or if sent as aforesaid addressed to any agent from time to time authorized by the Landlord to receive the same at the usual or*

last known place of business and any demand or notice sent by post in either case shall be deemed to have been delivered in the usual course of post.

Anna's draft was as follows –

2. *The tenant must:*

(1) (a) Pay any money due to the landlord (under this lease) without deduction;

(b) Pay interest if asked:

(i) at 3% above the base rate at the landlord's clearing bank;

(ii) calculated daily on any money 14 days or more overdue;

(iii) for each day it has been overdue.

4. *(1) Documents may be served by registered post or by delivery.*

(2) The address for service under paragraph (1) are -

(a) For the tenant, the premises, and

(b) For the landlord,

(i) Its registered office or usual or last known place of business, or

(ii) The usual or last known place of business of an agent authorized to accept service.

(3) Any document served by post will be taken to have been received on the second day on which postal deliveries are made after posting.

Comment on the adequacy or otherwise of Anna's draft.

QUESTION 3

Patsy Cane was charged under section 20 of the Penal Code. That section provides as follows –

*Unauthorized
use of boat or
vehicle*

S. 20. Any person who shall enter or being upon the premises of any other person, and without the consent of that person wilfully take and carry away any carriage, wagon, buggy, cart, boat, craft, vessel or any other vehicle whatsoever is guilty of a misdemeanour.

The Crown/State alleges that Patsy, while visiting her neighbour's house, took from the house a child's bicycle.

As Patsy's attorney-at-law, what would your arguments be in relation to the offence charged?

QUESTION 4

One month ago, Chico Perez, who is a 25- year old Cuban, was permitted into your territory on an ordinary tourist visa. Last week he applied under regulation 11 of the Immigration Regulations for an extended visa to remain for another three months. In his application he stated that he intended to take a short ten-week course in English during this period.

The Immigration Regulations define "Tourism" as "participation in travel, amateur sporting activities, informal study courses, relaxation, sightseeing and similar activities."

Regulation 11 provides –

An application for an extended visa may be granted by the Minister, if:

(a) the application is made in the jurisdiction;

(b) the Minister is satisfied that the further period of stay is not sought for the purpose of commencing, continuing or completing any studies or training;

(c) the Minister is satisfied that the applicant, if granted the visa, will comply with the following conditions:

(i) not to engage in any work;

(ii) not to engage for more than three months in any studies or training;

(iii) if over 16 years old and intends to study in a classroom environment for more than four weeks, will be examined by a medical practitioner and found to be in good health.

The Minister refused Chico's application on the ground that Chico intends to commence studies contrary to section 11 (b).

Chico wishes to appeal the Minister's decision and seeks your advice.

Advise Chico.

QUESTION 5

Six months ago, at around 3:00 a.m., the police stopped a car that Trickster was driving and found in it a screwdriver, a flashlight and a crowbar. Trickster was arrested, charged and eventually convicted under section 8 of the Criminal Code, for having in his possession, instruments for house-breaking.

In determining the meaning of “instrument for house-breaking”, the Court considered certain remarks of the Minister as set out in the Hansard Reports of 2010 and which were made by the Minister when the Code was being debated in Parliament. The Court accepted those remarks as bearing on the meaning of “instrument for house-breaking”.

Trickster wishes to appeal the conviction and has sought advice from your law firm. There is a disagreement in your office as to whether to advise Trickster to appeal. Those in favour state that the Court ought to have construed the Code literally, calling in aid only those things found within the four corners of the Code and that the Minister’s statement should not have been taken into consideration.

What is your opinion? Give reasons.

QUESTION 6

The defendant, Slippery, a motorist, stopped his car on the near side of a street which was twenty feet wide, looked in both rear view and side mirrors and was unable to see any

other vehicle. He then opened the door to the road about one foot and an overtaking vehicle collided with the door.

He was charged with having opened the door of a motor vehicle on a road so as to cause danger to other road users contrary to regulation 17 of the Road Traffic Regulations. That regulation states as follows –

No person shall open or cause or permit to be opened any door of a motor vehicle on a road so as to cause injury or danger to any person.

In his defence he contended that the overtaking driver should have allowed himself greater clearance distance. He also argued that it was absurd that he should be guilty of the offence when he had done all that was reasonable for a driver to do in the circumstances.

The magistrate before whom the matter was heard agreed with the submissions of Slippery and dismissed the case.

The prosecutor has appealed this decision to the Court of Appeal (assume this is allowed in your jurisdiction) on the ground that the offence was absolute and the magistrate erred in law in arriving at his decision.

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

QUESTION 7

In the context of the modern application of the Mischief Rule, comment on the following passage from Heydon's Case [1584] 3 Co. 7a; 76 E.R. 1129.

And it was resolved by them, that for sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law,) four things are to be discerned and considered:

- 1st What was the Common Law before the making of the Act?*
 - 2nd What was the Mischief and defect for which the Common Law did not provide?*
 - 3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth?*
 - and 4th The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.*
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QUESTION 8

Your client, Simon Simple, who lives adjacent to a large undeveloped lot of land owned by him, recently returned home after a twelve-month assignment abroad 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 onto 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.

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 reminded him of the Power of Attorney set out below with his (Simon's) signature.

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 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 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.

*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.*

The Power was duly dated and registered/recorded.

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

END OF PAPER