

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1995

LEGAL DRAFTING AND INTERPRETATION

Friday, August 11, 1995

Instruction to Students:

- (a) Time: 3½ hours.
- (b) Answer FIVE questions.
- (c) In answering any question a student 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

NORMAN MANLEY LAW SCHOOL LIBRARY
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

QUESTION 1

Ronnie, who owned and operated a small supermarket, was charged for selling fresh meat without a licence at a place other than a public market. While Ronnie admitted that he had no licence to sell fresh meat, he contended that he had not sold fresh meat at his supermarket but rather stored frozen meat in a deep freeze in a room at the back of the supermarket. Occasionally special customers purchased certain types of frozen meat by requesting it from the counter.

The Public Health Act provides inter alia

"2. In this Act -
"fresh meat" means meat of any cattle, sheep, goat, pig or turtle, slaughtered for sale and includes imported fresh meat."

"cold stores" means any premises or place used for keeping and preserving by a refrigerating process any fresh meat, game or fish intended for the food of man.

5. It shall not be lawful for any licensee of any cold stores to sell any fresh meat or fresh fish at or from such cold stores without having first obtained from the Corporation a licence for that purpose.

6. The Corporation may grant to any licensee of any cold stores a licence to sell fresh meat or fresh fish at or from any cold stores.

7. Every licence granted under this Act to sell fresh meat or fresh fish at or from any cold stores shall be under the hand of the Town Clerk.

8. Any fresh meat or fresh fish delivered from any cold stores whether such delivery be made in pursuance of a contract of sale or otherwise (except meat or fish delivered at any premises licensed for the sale of meat or fish under this Act or at any public market) shall be deemed to be sold within the meaning of this Act.

9. Every person who shall sell any fresh meat or fresh fish from any cold stores without having first obtained a licence for that purpose from the Corporation shall be liable for such offence to a fine."

Ronnie has sought your advice.

Advise him. Give reasons.

QUESTION 2

Comment on the dictum of Lord Blackburn in River Wear Commissioners v Adamson (1877) App. Cas. 743 at p. 764 -

"... that 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."

QUESTION 3

Tony Fireband was convicted by a magistrate of the offence of speaking at a meeting in a public place in respect of which meeting no notice had been given contrary to section 4 of the Public Meetings Act.

The facts presented to the court by the prosecution were that on Monday, January 25, 1995 at 4:30 p.m., a large crowd had gathered at Queens Square with many persons bearing anti-government placards and slogans. Soon thereafter, Fireband began addressing the meeting over a loudspeaker on issues that were political. Superintendent Tones, then approached Fireband and informed him that he was the officer in charge of that police division and warned him that he could be prosecuted for holding and taking part in a public meeting in a public place without notifying the police officer in charge of the area.

Fireband replied that he would continue to address the meeting and to march. This he subsequently did. As a result later in the evening he was charged accordingly. The particulars of the charge read as follows -

"Tony Fireband on January 25, 1995, at a place known as Queens Square held and organized a meeting in respect of which no notice had been given under s.3 of the Public Meetings Act."

Sections 3 and 4 of the Public Meetings Act provide -
"3. Any person who desires to hold a meeting in a public place shall, not less than forty-eight hours and not more than one month previous to the time at which he desires to hold such meeting, notify the police officer in charge of the area in which the meeting is to be held of his intention to hold the said meeting and of the time and

place at which the said meeting is to be held.

4. Any person who holds, organizes or speaks at any meeting in a public place in respect of which no notice has been given under section 3 shall be guilty of an offence."

Tony Fireband wishes to appeal this decision and has sought your advice.

Advise him. Give reasons.

QUESTION 4

In July 1993, Old Timer died, leaving a will which he had drafted himself. He had not sought the assistance of a lawyer since he was of the view that he was quite capable of making his own will. "There was nothing to it," he had often said.

The will which was properly executed provides as follows-

"Mr. Thomas Ditto is to be my executor.

To Mr. Thomas Ditto

This is to let you know that things with me is very bad and I am asking you to take everything in hand and when you have taken your debt you can pay the balance to Mrs. Timer. The people that I owe money to are Bobby Burns and Mike Boone. The money is in the National Bank and the book is in the press along with some cash."

The testator was survived by his widow Annie Timer and his mother Hortensia Timer.

The property which the testator possessed at the time of his death consisted of land and personal property which comprised a chattel house, cash, furniture, a motor car, stock in trade and benefits in a co-operative society. The total value was \$1.5 million.

The executor, Thomas Ditto, by way of an originating summons has sought the determination by the court of the following questions -

- (i) whether the testator's whole residuary estate was included in the gift to Mrs. Timer or only the part consisting of money;
- (ii) whether any of and if so what part of the estate should be distributed as upon an intestacy and if so to whom?

As the judge in this matter what is your judgment?

Give reasons.

QUESTION 5

June Cross died intestate on September 18, 1992, leaving real and personal property but without issue. She is survived by her widower, Tom Cross, and a sister, Kate Carr. She was also predeceased by three brothers one of whom left issue - two daughters and a son. The other two brothers died leaving no issue. The deceased was also predeceased by her parents, grandparents,

uncles and aunts.

Tom Cross was appointed administrator of the estate in March 1993. Thereafter, his lawyer wrote to the sister, nieces and nephew of the deceased advising them that they were entitled to a share of the deceased's estate.

In August 1993, however, the lawyer again wrote to the nieces and nephew informing them that by virtue of section 4 (1) (v) of the Intestate Estates and Property Charges Act, they were not in fact entitled to share in the deceased's estate.

The nieces and nephew, having already decided on how they were going to spend the legacy, are most distressed with this information. They have therefore applied by way of an originating summons for the interpretation of sections 4(1) (v), 5(1) (i) and 5(3) of the Intestate Estates and Property Charges Act.

These provisions state as follows -

" 4. (1).....

(v) if the intestate leaves no issue or parent then subject to the interest of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely: firstly, on the statutory trusts for the brothers and sisters of the whole blood of the intestate.

5. (1) Where under this part of this Act the residuary estate of an intestate or any part thereof is directed to be held on the statutory

trusts for the issue of the intestate the same shall be held upon the following trusts, namely -

- (i) In trust, in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of eighteen years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of eighteen years or marry under that age, of any child of the intestate who predeceases the intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate.

(2)...

(3) Where under this Part of this Act the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate."

This matter has come before you as a judge. It has been submitted on behalf of the nieces and nephew that they were entitled by virtue of the combined effect of s.5(1) (i) and 3 to share in the residuary estate of the deceased notwithstanding the provisions of s.4(1) (v). It has been argued on behalf of the administrator that since their father had predeceased June Cross, his issue could not be entitled to share in the residuary estate of the deceased.

What is your judgment? Give reasons.

QUESTION 6

John Snow, a barber and hairdresser, carried on his business in a room attached to his house where customers came and were shaved or had their hair cut, paying for the service provided. He kept 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, 1994, 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, artificer, 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 smith carries on the trade of carpentering or shoeing horses.

For the defence it was submitted that John Snow is not a tradesman, artificer, 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 an artificer 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 7

Advise on the usefulness of the following Power of Attorney. It has been properly executed and registered/recorded.

" BY THIS POWER OF ATTORNEY

OIL COMPANY LIMITED a company incorporated under the laws of and carrying on business within the Commonwealth of the Bahamas (hereinafter called "the Company") and having its Registered Office in the City of Nassau in the Island of New Providence within the Commonwealth hereby appoints OSCAR ROSE of the City of Nassau in the Island of New Providence aforesaid to be Attorney of the Company from the 21st day of January, A.D., 1995 to such time as this said Power of Attorney shall have been expressly revoked in writing in any country of the world for and on behalf of the Company to rent office space wherever necessary for and on behalf of the Company, to open bank accounts and to be signatory to these accounts, to do any and all transactions pursuant to the Company's purpose as set forth in its charter, and to make and sign agreements to accomplish the foregoing purpose, in general to do, execute and perform any act, deed, matter or thing, whatsoever that ought to be done executed or performed of every nature and kind whatsoever as fully and effectually as we could do if personally present.

IN WITNESS WHEREOF the said
OIL COMPANY LIMITED has
caused its Common Seal to
be affixed the 21st day of
January, A.D. , 1995."

QUESTION 8

The Income Tax Act of 1993 came into force on January 15, 1994. On that date the previous Act (Act 2 of 1964) was repealed. James Smooth died in April 1993. In October 1993, his executors were informed by Bank of Development Ltd. that they had on deposit

a sum of \$685,000 standing on credit to his estate. In November 1993 the executors reported the fact of this account to the Commissioner of Income Tax in order to ascertain whether this sum was liable to income tax.

In February 1995, the Commissioner advised the executors that an assessment of income tax has been made on the interest earned on the account for the years 1986 - 1992 inclusive. The executors sought the advice of counsel who has challenged the assessment for the years 1986 - 1992 and has cited section 6 of Act 2 of 1964 and section 40 of the Income Tax Act, 1993.

Section 6 provides as follows -

"6. Where the Assessment Committee discovers that any person liable to income tax has not been assessed in respect thereof or has been assessed at a less amount than that which ought to have been charged, they may within the year of assessment or within three years after the expiration thereof assess such person at such amount or additional amount as according to their judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal, payment and recovery of income tax shall apply to such assessment or additional assessment."

Section 40 provides as follows -

"40. Notwithstanding the repeal of the Acts mentioned in the Fifth Schedule to this Act (hereinafter called "repealed Acts") or the revocation of the rules and regulations made thereunder the provisions contained therein shall apply to all actions, appeals and legal proceedings which are pending at the coming into operation of this Act or may, thereafter be taken into

relation to such matters arising out of the repealed Act."

The Commissioner on the other hand cited section 20 of the Act of 1993 as the basis for assessing the taxes due over a six-year period. Section 20 provides as follows -

"20. Where it appears to the Commissioner that any person has not been assessed or has been assessed to a less amount than that which ought to have been charged with, the Commissioner may, within the year of assessment or within six years after the expiration thereof assess such person at such amount or surcharge as according to his judgment ought to have been charged."

The matter has now come before you as a Supreme/High Court judge.

What is your judgment? Give reasons.
