

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2008

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 23, 2008)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Your clients are members of the Guild Council of the New University. The President of the Guild tells you that in October last year (2007) the Guild started publishing a fortnightly paper on the University campus for distribution free of cost to students and staff. The paper contains campus news and observations thereon as well as some public news and commentary thereon.

The paper is owned by the Guild and managed by the Guild Council, but it has two co-editors. The Guild had already negotiated and continues to negotiate for advertisements to be included in the paper since this is the basis of funding for it. The number of advertisements has fluctuated so far, from issue to issue but never exceeding thirty percent of the contents of the paper. However, in December 2007 and March 2008 advertisements made up slightly more than fifty percent of the contents of the paper.

The Guild became aware of the Newspaper Act in November 2007 but was advised by one of its members who is a law student, that they were not required to comply with the Act as the paper did not contain only, or principally advertisements.

The Newspaper Act provides as follows –

“NEWSPAPER ACT

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, or proprietors, of the editor or editors and of the business manager and of each of them, of every newspaper published in the state, to file with the Clerk of the Court of the parish 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 or proprietors, editor or editors, 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 Magistrate, 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 the second section of this Act shall be filed with the Clerk of the Court before such newspaper is published and each and every, the proprietor or proprietors, editor or editors, and business manager of such newspaper shall upon summary conviction before a Magistrate, 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.”

Last week the entire Guild Council and the co-editors were charged under Section 3 of the Act, tried and found guilty and fined for the March and April issues.

The Guild now seeks your advice as to whether its members and the co-editors should appeal the convictions and as to whether they are required to comply with the Act.

Advise the Guild. Give reasons.

QUESTION 2

Fireman Slow, while driving a fire engine on its way to a fire, disobeyed the red stop lights at three different intersections. He was subsequently charged with a breach of section 35 of the Road Traffic Act for failing to stop at a red light.

Section 35 states as follows –

“Where a traffic sign has been lawfully placed on or near a road, a person driving or propelling a vehicle who fails to comply with the indication given by the sign shall be liable on summary conviction to a fine not exceeding five hundred dollars.”

In his defence, Fireman Slow submitted, that section 80 of the Road Traffic Act was a defence to such a charge.

Section 80 states as follows –

“No statutory provision imposing a speed limit on motor vehicles shall apply to any vehicle on an occasion when it is being used for fire brigade, ambulance or police purposes if the observance of those provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used on the occasion.”

The Magistrate before whom the matter was tried agreed with the submission of Fireman Slow and added that it was absurd to think that an emergency vehicle when acting as such could be required to stop at traffic lights.

He then cited as authority for his judgment the dictum of Lord Blackburn in River Wear Commissioners v Adamson (1877) App. Cas. 746: 764 –

“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 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 court thinks the words will bear.”

As an attorney-at-law in the office of the Director of Public Prosecutions/Attorney General you have been asked to advise as to whether this decision should be appealed (a procedure permitted by the jurisdiction).

What is your advice? Give reasons.

QUESTION 3

Your client Jah Rebel, a dreadlocked Rastafarian, was charged for riding a motor cycle without wearing a protective helmet, contrary to section 43D of the Road Traffic (Amendment) Act, 1999 –

“43D – (1) Every person shall, at all times while driving, or riding on, a motor cycle, wear a protective helmet of the prescribed shape, quality, construction or standard.”

The facts were that on March 25, 2008, Jah Rebel was seen riding a motor cycle along Rose Avenue without wearing the mandatory protective helmet. He was signaled to stop by Corporal Baldhead who questioned him as to why he did not have on his helmet. His reply was that his locks were of such a length and thickness as to make it impossible for him to wear the prescribed helmet. And anyway his locks would protect him in the event of an accident. Thereupon he was charged.

At his trial it was submitted by his attorney-at-law, Mark Justice, who had recently been admitted to practice, that:

- (1) the shape and size of the protective helmets approved by the Minister did not take into account the special needs of certain cyclists such as dreadlocked Rastafarians; and
- (2) the defendant’s human rights had been breached in that as a Rastafarian his religious rights which are protected by the Constitution were being violated. Section 16(1) of the Constitution provides that -

“Except with his own consent no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of

thought and of religion, freedom to change his religious belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religious belief in worship, teaching, practice and observance.”

The Magistrate however found him guilty as charged and stated –

“As far as I am concerned there is just no substance at all in your submission. No one is bound to ride a motor cycle. All that the law prescribes is that if you do ride a motor cycle you must wear a crash helmet. The effect of the law no doubt bears on the Rastafarian community in this respect because it means that they will often be prevented from riding a motor cycle not because of the law but by the requirements of their religion.

Further it seems to me that it is quite unarguable that the law requiring the wearing of a crash helmet is unconstitutional having regard to the provisions of sub-section (6) of section 16 which states –

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:-

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.”

Jah Rebel wishes to appeal this decision and has consulted you.

What is your advice? Give reasons.

QUESTION 4

Recently, a number of prominent persons, including some tourism officials, have expressed concern and dismay at some of the wooden carvings of male figures in the nude, which are offered for sale on the North Coast and which they think are obscene. When interviewed, however, the carvers claimed that such carvings have been on sale for many years now and that apart from the fact that they sold very well, though almost exclusively to visitors, no one has so far brought legal action against them.

Nevertheless, some of these prominent persons are now suggesting that the persons who carve these figures, should be prosecuted under the Obscene Publication (Suppression of) Act. One of them has written to the Director of Public Prosecutions (DPP)/Attorney General (AG) requesting that these carvers be charged.

The Obscene Publications (Suppression of) Act provides –

- “1. This Act may be cited as the Obscene Publications (Suppression of) Act.
2. Any person who -
 - (a) for purposes of or by way of trade or for distribution or public exhibition makes or produces or has in his possession any

obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects;

- (b) for the purposes above mentioned imports, conveys or exports or causes to be imported, conveyed or exported any of the said obscene matters or things or in any matter whatsoever puts them into circulation;
- (c) carries on or takes part in a business, whether public or private concerned with any of the said obscene matters or things, or deals in the said matters or things in any manner whatsoever, or distributes them or exhibits them publicly or makes a business of lending them;
- (d) advertises or makes known by any means whatsoever in view of assisting in the said circulation or traffic, that a person is engaged in any of the above acts, or advertises or makes known how or from whom the said obscene matters or things can be procured either directly or indirectly,

shall be guilty of an offence under this Act and shall upon summary conviction before a Magistrate be liable to a penalty not exceeding forty dollars and in default of payment to be imprisoned for a term not exceeding three months, with or without hard labour.”

The DPP/AG seeks your advice on the matter. What is your advice? Give reasons.

QUESTION 5

Carrington has brought an action to recover damages from Nigel, for the loss of his pig, which was killed by Nigel's dog, Sugar.

As the presiding magistrate, the following has been submitted to you by Carrington's attorney-at-law –

- “1. Section 2 of the Dogs (Liability for Injuries) Act provides as follows -
'The owner of every dog shall be liable to damages for injury done to every 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.'
2. Cattle is defined in the Concise Oxford Dictionary as 'oxen; livestock'.
3. In Child v Hearn (1874-5) 9-10 L.R. Ex. 176, the word 'cattle' was extended to include straying pigs under the Railway Clauses Consolidated Act 1854 which imposed an obligation to fence against the straying of cattle.
4. In Phillips v Bourne [1947] 1 All E.R. 374, the word 'cattle' in Schedule D to the Income Tax Act 1918 (U.K.) was held to include pigs.
5. In Anderson v Ledgister (1955) 6 J.L.R. 358, the Jamaican Court of Appeal held that the word 'cattle' included goats.”

On the other hand, Nigel's attorney-at-law submitted that –

- “1. The Dogs Act 1865 (U.K.), section 1 was verbatim with section 2 of the Dogs (Liability for Injuries) Act, which was repealed in 1906 and replaced

by a new Dogs Act in which cattle was defined to include 'horses, mules, asses, goats and swine'. Further, this definition was later amended in the Dogs (Amendment) Act to include poultry. Pigs were therefore not contemplated in the 1865 Act.

2. While the dictionary defines cattle to include livestock the fact that section 2 provides for 'cattle or sheep' shows that the statute was intended to be restricted to oxen and sheep only and not to be applied to livestock in general - *expressio unius est exclusio alterius*.
3. In Tallents v Bell [1994] 2 All E.R. 474 the plaintiff lost his claim for damages in respect of rabbits destroyed as a result of an attack by dogs. This decision was made under the most recent Dogs Act (U.K.).”

What is your judgment? Give reasons.

QUESTION 6

Your client, Daniel Defoe, was appointed an attorney under the following Power of Attorney -

“KNOW ALL MEN BY THESE PRESENTS that I DAVID McLEAN, Accountant of 659 East 54th Street, New York City, New York HEREBY APPOINT DANIEL DEFOE, Farm Manager of 20 Opal Street, Independence Square, St. Thomas to be my true and lawful attorney for me and in my name and for my use to perform the following acts and things that is to say:

1. To lease my house at 22 Jewel Close for two years with an option by the landlord to renew for an additional two years.

2. To deposit the rent from the dwelling house to my savings account at the International Bank, Independence Square Branch.
3. To sell my Kia motor car and to deposit the proceeds of sale to the said account.
4. To withdraw the interest accrued from the said account to maintain the house.
5. To construct on my seaside lot at East End Bay a beach cottage comprising 1,500 square feet the plans of which are with my architect, Simon Simple.
6. To operate the cottage as a resort cottage.
7. To maintain the cottage from the rent obtained.
8. To operate and manage my orchid farm at Sunnyvale Estate, Mount Esau.”

The Power of Attorney was properly executed, notarized, registered/recorded and the Certificate of the Clerk of the County Court attached.

Mr. Defoe has come to see you. He tells you that his attempts to carry out the terms of the Power of Attorney have so far been futile as various attorneys-at-law have advised their clients – prospective lessees, the bank, prospective building engineers, the collector of taxes and the Villa Properties Association – not to enter into any legal arrangements with him.

He therefore seeks your advice. Advise him.

QUESTION 7

Prudence 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 Prudence 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.”

Prudences'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;
 - (e) locks may not be changed without written permission.
- (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) shall not permit the attachment of any attic aerial or antenna on the premises;

- (c) may enter the premises at any time to make necessary repairs.”

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

QUESTION 8

Under the Public Servants (Pensions) Act (1966), a public servant upon his retirement from the public service, is entitled to elect one of several prescribed superannuation allowance plans.

Marvin Gates retired from the public service in 2000. 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 March 2008, The Public Servants (Pensions) (Amendment) Act came into effect and provided as follows –

“22. 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.

Marvin Gates died last month. Mrs. Gates has written to the Commissioner of Pensions requesting him to invoke section 22 so that she can continue to receive her husband's pension.

The Commissioner is of the view that section 22 does not apply in Mrs. Gates' circumstances and has sought your advice.

Advise the Commissioner. Give reasons.
