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NORMAN MANLEY LAW SCHOOL
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LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1988

LEGAL DRAFTING AND INTERPRETATION

(Tuesday, August 9, 1988)

Instructions to Students

- a) Time: 3½ hours
- b) Answer any 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.

QUESTION 1

(a) Comment on the following dictum of Lord Guest in R. v Schildkamp (1971) A.C. 1 at 15.

"Where the words of a statute are clear and unambiguous then effect must be given to them unless they lead either to injustice or absurdity."

(b) Constable Sharpeye obtained from a Justice of the Peace a warrant to search the premises of Shady. He had sworn on oath that he had reasonable grounds for believing that typewriters, television sets and tape decks were concealed in the house that Shady occupied.

The search warrant was then executed but none of the articles listed in the search warrant were found. However, a large quantity of drugs and medical accessories were found under a bed in the house. These articles were seized by Sharpeye.

Constable Sharpeye then laid an information under Section 36 (1) of the Summary Offences Act which states as follows:

"It shall be lawful for any constable to arrest without warrant any person having in his possession or under his control in any manner or in any place anything which the constable has reasonable cause to suspect has been stolen or unlawfully obtained."

At the hearing before a Magistrate the charge was dismissed on the ground that the words "in any place" meant in any public place and therefore the arrest was unlawful. The Magistrate further stated that the legislature could not have intended that the police would be allowed without a warrant, to enter private premises at will.

Constable Sharpeye has appealed this decision. As a judge of the Court of Appeal, what judgment would you give? Give reasons.

QUESTION 2

Assume that in 1986 Parliament enacted The Income Tax (Amendment) Act 1986, which consisted of only two sections, in the following terms:

"1. Section 32 of the Income Tax Act is amended by adding thereto the following sub-section -

(9) In addition to the taxes payable under sub-section (1) every taxpayer shall pay a surcharge of two percent of such taxes but this sub-section does not apply to -

- (a) a taxpayer over the age of 65 years;
- (b) a taxpayer whose income is less than \$8,000; or
- (c) a Member of Parliament.

2. This Act or any provisions thereof shall come into force on a day to be appointed by the Minister by notice in the Gazette."

A notice was subsequently issued by the Minister of Finance declaring that -

"The Income Tax (Amendment) Act 1986, with the exception of paragraph (c) of sub-section (9) shall come into force on the first day of January, 1987."

Mr. Eagleye, a law student who was under the age of 65 years, but whose taxable income for the taxation year 1987 was over \$8,000, in filing his income tax return for 1987 failed to add the surcharge in estimating his tax liability. In due course he was assessed for the surcharge, which amounted to \$125, being two per cent of the taxes payable by him under the amending Act. He has appealed to the Revenue Board, contending that he is not liable to pay the surcharge called for by the Act.

What argument would you advance in support of Eagleye's contention?

QUESTION 3

Comment on the following dictum of Lord Denning in Magor and St. Mellons RDC v Newport Corporation (1950) 2 All E.R. 1226 at 1236:

"We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. This is an easy thing to do, and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

QUESTION 4

The accused was charged before a Magistrate that he unlawfully had liquor in a vehicle contrary to section 5 of The Liquor Act.

The evidence before the Magistrate disclosed that on March 2, 1988, at about 6:00 p.m., on his way home to supper, the accused, who was a taxi driver, drove to the liquor store in his taxi and purchased liquor, which he placed in his taxi for the purpose of driving to his home and leaving the liquor there. He had no passengers in the vehicle. Before he reached home he was stopped by the police; the liquor was found in the taxi, and the charge referred to above was laid. The taxi is a vehicle as defined in The Vehicles Act, and the accused's home is a place where liquor may be lawfully consumed.

Section 5 of The Liquor Act reads as follows:

"5. (1) Subject to subsection (2) ... no person by himself, his servant or agent shall have or keep or consume or give 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 accused has been convicted and he has sought your advice as to whether he should appeal.

What is your advice? Give reasons.

QUESTION 5

From 1980 to 1986, a farmer owning a farm of thirty acres permitted various contractors to dig and carry off marl from his land to be used in the construction of roads and charged \$100 a ton for the marl. The marl pit, which was three acres in extent and about ten feet deep, was worked continuously each day by workmen employed by the various contractors. The farmer did not advertise marl for sale but employed a person to check the quantities taken and there was a regular system of rendering accounts and making payments. The farmer was assessed for income tax for the years 1980 to 1986, by virtue of Rule 111 of Schedule A of the Income Tax Act which states:

" Rules for estimating the annual value of certain other lands, tenements, hereditaments or heritages which are not to be charged according to the preceding general rule.

- (1) In the case of iron works, gasworks, salt springs, or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks drains, drains or levels, fishings, rights of markets and fairs,

tolls, railways and other ways, bridges, ferries and other concerns of the like nature having profits from or arising out of the lands, tenements, hereditaments or heritages, the annual value shall be understood to be the profits of the preceding year."

The farmer, who regards his legal knowledge as better than most lawyers, has nevertheless come to you to confirm his view that the assessment was made under the wrong provision.

What is your view? Give reasons.

QUESTION 6

Your client, Dr. D. Pullteeth, has been charged with unprofessional conduct by the Dental Association. The specific charge is that he used the trade name "New York Dentists" for the premises in which he practised dentistry, contrary to section 5 of The Dentistry Act.

Section 5 states as follows:

"No member of the Association, in the practice of the profession of dentistry or dental surgery, shall use any trade name or designation or corporate name, or any distinguishing name, for any premises in which he carries on the practice of his profession, but every such member shall for all purposes in connection with his profession use his own proper name."

Dr. Pullteeth has sought your advice as to whether he has contravened the statute.

What is your advice? Give reasons.

QUESTION 7

Comment on the following statement from Sedgwick's Statutory Construction and Constitutional Law:

"A Statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions already past, is deemed to be retrospective or retroactive."

QUESTION 8

A statute, which came into force on March 1, 1987, provides that:

"All actions against the owner or board of management of a hospital for damages sustained by any person by reason or in consequence of any act of negligence shall be commenced within one year after the cause of action arose; and every action within the scope of this Section that is not commenced within the period so limited shall be absolutely barred."

In September, 1986, a patient in a hospital suffered injury as the result of the negligence of a nurse employed by the hospital while acting in the course of her duties. In November, 1987, the patient brought an action for damages against the hospital which pleaded that the action was barred by the statute quoted above.

As the judge at the trial, what judgment would you give? Give reasons.
