

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

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FOR REFERENCE ONLY LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1989

LEGAL DRAFTING AND INTERPRETATION

(Wednesday, August 23, 1989)

Instructions to Students

- a) Time: 3½ hours
 - b) Answer FIVE (5) questions only
 - 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.
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QUESTION 1

The defendant Snuffy, a motorist, stopped his car on the near side of a street which was nineteen feet wide, looked in both rear view and wind mirrors and was unable to see any other vehicle. He therefore opened the offside door about one foot and an over-taking 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 unreasonable 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 Snuffy and dismissed the case.

The prosecutor has appealed this decision by case stated to the Court of Appeal 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 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 signafication."

QUESTION 3

Mr. John Doberman, requiring security protection for his factory retained the services of Sleepy Securities Ltd. to provide a guard dog and handler for the factory and grounds.

One night in March of this year, the handler assigned to the factory needed to go to the bathroom urgently. He tried to enter the washroom at the factory but found that the door was locked. He therefore secured the dog under his control by means of a strong chain and metal collar which he secured to a metal post near the entrance of the factory. He then went off to use the facilities of a bar about a hundred feet down the road.

While he was away, Stelthy entered the factory grounds and walked towards the factory, whereupon the dog lunged at him biting him on the hand.

Stelthy lodged a complaint with the Police who subsequently charged Doberman with a breach of the Guard Dogs Act, and specifically Section 2(1). Section 2 of the Act states as follows:

" 2. (1) A person shall not use or permit the use of a guard dog at any premises unless a person ("the handler") who is capable of controlling the dog is present on the premises and the dog is under the control of the handler at all times while it is being so used except while it is secured so that it is not at liberty to go freely about the premises.

(2) The handler of a guard dog shall keep the dog under his control at all times while it is being used as a guard dog at any premises except -

- (a) while another handler has control over the dog; or
- (b) while the dog is secured so that it is not at liberty to go freely about the premises."

The Magistrate before whom the matter was tried held that Doberman had breached the provisions of Section 2(1) and was therefore guilty of the offence as charged.

Doberman wishes to appeal this decision and has sought your advice. What is your advice? Give reasons.

QUESTION 4

Sara Early, a bright university graduate, made her will (without legal assistance) in December 1985. She appointed her sister Agatha Tough, to be her sole executrix and directed that her just debts and funeral and testamentary expenses be paid by her executrix. The dispositive part of her will stated as follows -

"I GIVE AND BEQUEATH to my daughter Ann-Marie Button who now resides in the United States of America the following:

- (1) the proceeds of life insurance policy number 2121 with Mutual Life Insurance Co. Ltd.;
- (2) Realty in property at Lot 1115 Overboro subject to -
 - (a) payment of mortgage and interest thereon to the Bank of Nova Scotia;
 - (b) payment until mature of the premiums payable on life insurance policy number 1373 with British American Life Ins. Co. on the life of the above-named Ann-Marie Button;
 - (c) creation of a fund to provide a life interest to my Mother Mrs. May Good.
- (3) To my Mother the said Mrs. May Good -
 - (a) all my shares and other interest in the Churches Co-op. Credit Union Ltd.;
 - (b) all my shares and accruing interest in the Civil Service Mutual Thrift Soc. Ltd.;
 - (c) Life interest in property at Lot 1115 Overboro and on the death of my Mother the life interest hereby created shall revert absolutely to my daughter Ann-Marie.
- (4) I HEREBY GIVE AND BEQUEATH to my Father Michael Jackson and his wife Precious half proceeds from my Mutual Growth Insurance Policy number 5095.
- (5) To my nephews Mark and Phillip Tough in equal portions the other half of the proceeds from the Mutual Growth Insurance Policy number 5095.

The rest and residue of my estate I GIVE AND BEQUEATH to my daughter Ann-Marie Button.

For the faithful execution and administration of this my last Will and Testament I direct that my sister Mrs. Agatha Tough be allowed five percent of the Cash Proceeds on realization of my personal property and of any income accruing from property held on Trust."

Sara died last year and her mother a retired teacher on a small pension who was living in rented premises moved into the house at 1115 Overboro.

Last month, however, probate of the will having been recently granted, Mrs. Tough the Executrix, told Mrs. Good that she should vacate the house as she was about to sell it as required by the terms of Sara's Will.

Mrs. Good has sought your advice.

Advise her giving reasons.

QUESTION 5

Farm Supplies Co. Ltd. was incorporated a few years ago and has been carrying on the business of retailers and wholesalers of a wide variety of goods.

The objects of the company according to its memorandum of association are:

- "(a) Buying, selling, bartering, taking on consignment-dealing in and packing fruit, fodder and other farm produce, spraying materials and all kinds of insecticides and fungicides, power spraying outfits, hand pumps and all other commodities or material incidental to the use of the same, nails, pulp heads, paper and all materials necessary for the purpose of packing fruit and farm produce, flour, feeds and all milling produce, artificial fertilizers of all kinds, seeds, farming implements, tools and waggons and all manner of merchandise.
- (b) Buying, selling, leasing, erecting, improving, managing and operating stores, storehouses, warehouses and other buildings which may be incidental or conducive to the purposes of the company, and carrying on the business of storekeepers and warehousemen, in connection therein."

Mr. Strict and four other shareholders have brought a minority action against the company for operating contrary to the memorandum of association - to wit carrying on the business of a general store.

As the judge presiding in the action what judgment would you give? Give reasons.

QUESTION 6

A private hospital - Modern Medical Hospital Ltd. built an apartment complex in 1987, to provide housing facilities at a subsidized rental for the staff of the hospital. Ninety percent of the apartments have been rented to members of staff including administrative and clerical staff. The remaining ten percent were rented to private persons.

In 1988 the Collector of Taxes assessed the land on which the apartment building stands for purposes of land taxes. The hospital administration were quite surprised when they received the notice of assessment as they had been advised at the time of construction of the building that neither it nor the land would be subject to the payment of any taxes by virtue of section 8 of the Private Hospitals Act. Section 8 states as follows:

"8. Subject to liability for certain local improvements as provided in the Local Authorities Act, a private hospital and any and all property, real or personal, of the hospital, including:

- (a) property of which the hospital is beneficial owner;
and
- (b) property owned by a company controlled by the hospital and which has as its shareholders or members only non-profit making bodies;

if that property is used for hospital purposes, is exempt from taxation of any kind; and for the purposes of this section property used by the hospital for necessary parking facilities, interns' quarters, school of nursing, nurses' residence, power house or laundry shall be deemed to be used for hospital purposes."

What advice would you give the hospital administration? Give reasons.

QUESTION 7

In interpreting legislation what use can be made of the following:

- (i) marginal notes;
 - (ii) the short title;
 - (iii) headings;
 - (iv) punctuation?
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QUESTION 8

In December 1987 John Overdue sold a piece of land to a third party on behalf of Errol Wontpay. It had been verbally agreed that Overdue would be paid a commission of five percent on the sale price of the land. In November 1988 Wontpay received from the purchaser the full purchase price and Overdue therefore sought his commission.

In September 1988, however, The Frauds Act was amended by the addition of a new section designated section 19. As a result of that section Wontpay claimed that he was not legally bound to pay the commission, as the contract between himself and Overdue was a verbal one. Section 19 states as follows:

"No action shall be brought to charge any person for the payment of a commission or other remuneration for the sale of real property unless the agreement upon which such action shall be brought shall be in writing separate from the sale agreement and signed by the party to be charged therewith or some person thereunto by him lawfully authorised."

Overdue, who is of the view that section 19 does not apply to his case, now seeks your advice.

What is your advice? Give reasons.
