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LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1990

LEGAL DRAFTING AND INTERPRETATION

(Tuesday, August 14, 1990)

Instructions to Students

- a) Time: 3 1/2 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.
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QUESTION 1

Your client worked in a steel factory for many years. The air in the factory was often laden with dust from the particles of sand and silica produced from the grinding and shot-blasting process which was produced when the sand was removed from the steel as it emerged from the mould. The situation was exaggerated by the fact that the factory was not properly ventilated as required by the Factories Act.

In 1978 the operators of the factory introduced very modern equipment and renovated the factory. These changes eliminated the dust problem that existed for many years.

In 1985 your client became very ill and was diagnosed as having pneumoconiosis, a disease in which slowly accruing and progressive damage is done to the lungs of the patient. According to the medical evidence a person susceptible to the disease and who inhaled noxious dust over a period of year would have suffered substantial injury before it could be discovered by any means known to medical science.

In 1987 you instituted legal proceedings against the owners of the factory for negligence and or breaches of statutory duty. As a result of the changes at the factory after 1978, however, a breach of duty by the owners could no longer be established as a basis for the causation of the injuries after 1978.

The matter was heard before Strict J. who held that the action was statute-barred by virtue of section 2 of the Limitation of Actions Act and this was so notwithstanding section 15 of the Act.

Section 2 states as follows -

"2. The following action shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say, actions founded on tort.

Section 15 states as follows -

"15. Where, in the cause of any action for which a period of limitation is prescribed by this Act, either -

- (a) the action is based upon the fraud of the defendant or his agent or
- (b) the right of action is concealed by the fraud of any such person as aforesaid, or
- (c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake or could with reasonable diligence have discovered it".

Your client wishes to appeal this decision.

What is your advice? Give reasons.

QUESTION 2

Constable Quickie, while on foot patrol on High Street saw Fingers committing a summary offence on the street and thereupon attempted to arrest him under the authority of section 10 of the Summary Courts Act. Fingers, however, resisted arrest and assaulted the constable.

The magistrate before whom the matter was heard dismissed both informations preferred against Fingers for assaulting and resisting Quickie in the execution of his duty on the ground that he was not authorised by section 10 of the Act to arrest Fingers. This being the case, Quickie was not acting in the execution of his duty when he did so. The magistrate said that section 20 referred only to such summary offences as related to offences committed on private property.

Section 10 of the Summary Court Act states as follows -
 "Any person who is found committing any summary offence may be taken into custody, without warrant, by a constable, or may be apprehended by the owner of the property on or with respect to which any such offence is committed, or by his servant or any other person authorised by him, and shall in the latter case be delivered as soon as possible into the custody of any constable to be dealt with according to law".

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Constable Quickie wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 3

E.T. was convicted of the offence of interfering with a motor car without the knowledge or permission of the owner. At the time when he was caught interfering with the car, it was parked in a garage on the owner's private property.

Section 5 of the Road Traffic Act states as follows -

"5. Any person who, without knowledge or permission of the owner, in any way interferes with a motor vehicle while the vehicle is on the road or parking place shall be guilty of an offence".

E.T. wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 4

In October 1986, Captain Miracle drafted his will (without legal assistance) in the following terms:

"This is the Last Will and Testament of me Horatio Miracle of "Evergreen", Central P.O. retired Navy Captain.

1. I Give, Devise and Bequeath to my nephew Robert Lucky my house at Orange Walk, Belize.
2. I give, Devise and Bequeath to my nephew Harold Gifted my one acre of land at Bayview Gardens, Nassau.
3. I Direct that all moneys of which I die possessed of shall be shared by my nephews and nieces, namely, Arthur Thompson, Penelope Smith, Justin St. John and Sara Simpson.

I appoint my nephew Bob St. John as Sole Executor of this my will and I revoke all former Wills".

Captain Miracle died in 1989 leaving the realty specified in the will as well as stocks and shares and debentures in companies, with a total money value of \$150,000; cash in two banks of \$80,000; dividends received or accrued of \$8,000 and an income tax repayment due to him of \$1,500.

Captain Miracle is survived by a brother, two nieces and two nephews, in addition to the nieces and nephews mentioned in the will, who are all alive.

On an originating summons brought by the brother and the two nephews and two nieces, the court held that the bequest at paragraph 3 did not include the stocks, shares and debentures.

The specific legatees, that is to say, the nieces and nephews mentioned in paragraph 3 have appealed this decision. They have submitted before the Court of Appeal that "all moneys of which I die possessed" included the whole personal estate of the testator. That where a will is drawn by a lawyer it is proper to adopt the so-called strict legal meaning of the word "money" which includes only cash or currency in a testator's possession or due to him but not investments. But in the case of the will of a layman, "money" must be given its popular meaning which includes stock, shares and debentures. To find the sense in which the word is used in a particular will it is necessary to look at the circumstances and the context.

On the other hand, it was submitted on behalf of the Respondents that in a will the word "money" must be construed as meaning cash, i.e. currency in the testator's possession, sums to his credit at a bank on current or deposit account, and any other sums of which he was entitled at the time of his death to demand immediate payment. That is the proper construction in the absence of any context or admissible circumstances indicating that the word has been used in a more extended sense.

As a judge of the court what judgment would you give? Give reasons.

QUESTION 5

"The principles of language applicable to all written instruments apply to statutes as well. Many of the so-called rules of interpretation or canons of construction are but ordinary principles of language". E.A. Driedger, The Construction of Statutes. Discuss.

QUESTION 6

The Agricultural Development Corporation refused an application to grant a licence to Pure Milk Daries Ltd. by virtue of section 5 of the Agricultural Development Corporation Act which states as follows -

"5. The Corporation may refuse to grant a licence where the applicant is not qualified by experience, financial responsibility and equipment to properly conduct the proposed business of for any other reason the Corporation may deem sufficient".

The reason given by the Corporation for its refusal to grant the licence was that there were already enough dairies in the area in which Pure Milk intended to operate.

Pure Milk wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 7

Miss Management, the monthly tenant of residential premises on Old Church Street owned by Mr. Scrooge was given notice to quit the premises by 31st December, 1989. At the top of the notice was the caption -

"Reason for Notice - Premises are for sale".

In January 1990, an agreement for sale was signed between Mrs. Purchaser and Mr. Scrooge. By this agreement the date for completion of the sale is the 31st day of May, 1990, which is also the date of possession. The premises are to be handed over

with vacant possession.

Miss Management, however, argued that the notice to quit was not valid as it was not based on any of the grounds stated in section 25 of the Rent Restriction Act on which a court was empowered to make an order for possession.

Mr. Scrooge therefore sought an order from the court for her to vacate the premises by the 30th April, 1990, which was granted. In his reasons for granting the order, the magistrate made it clear that he agreed that under section 25 an order for possession could not be made where the reason given was that the premises were up for sale. However, he went on to say that in his view section 25 was not to be considered exhaustive -

" In my view section 25 does not exclude a jurisdiction to make an order for possession in the circumstances before me since it must have been an oversight on the part of the legislative in not making specific statutory provisions to cover the case in point. Where fetters are apparently imposed by the legislature on the rights of an owner to deal with his property as he considers fit, if such fetters are shown to be too onerous then it must be assumed that it was never so intended by the legislature".

Miss Management, who is still in occupation, wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 8

In January 1989, Mr. Subtle, the Managing Director of the weekly newspaper "Say It Loud" libelled the Minister of High Theory, Mr. Philosopher. In March 1989 Philosopher commenced an action against Subtle. In October 1989 judgment was entered for Philopher with costs. The judgement against Subtle has remained unsatisfied.

In July 1989, however, the Newspapers Act was amended by the insertion of a new section as section 5A. That section states

as follows -

- "5.A (1) Where a person against whom judgement is recovered in a civil action for libel published in a book or newspaper is a body corporate, the judgement shall, subject to the provisions of subsections (2) and (3) be enforceable jointly and severally against the body corporate and every person who was a director or an officer at the time of the publication.
- (2) Execution for the enforcement of the judgement shall not issue against any such director or officer save with the leave of the Court.
- (3) Leave to issue such execution shall be granted if it appears to the court that the assets of the body corporate are insufficient to satisfy the judgement, unless the director or officer satisfied the court that the libel was published without his knowledge and that he exercised all due diligence to prevent the commission thereof and to mitigate (by way of suitable public apology or otherwise) any damage or prejudice caused or likely to be caused to the person libelled as a result of the libel".

Mr. Philosopher has now sought an order from you (a judge in Chambers) to issue execution against nine defendants personally who were directors of the newspaper in accordance with section 5A of the Act.

What is your order? Give reasons.
