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FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1991

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MONA, KINGSTON, JAMAICA

LEGAL DRAFTING AND INTERPRETATION

(Monday, August 12, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
  - b) Answer FIVE questions only
  - 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

In an action for cattle trespass, the defendants, Extensive Estates Ltd., filed a special defence under section 14 of the Trespass Act which would absolve them from liability if they proved that their land was "enclosed by good and sufficient fences and they had adopted all other reasonable and proper precautions for the confinement of their stock".

Section 14 provides as follows -

"If in any action brought to recover any damages under this law the owner of the stock shall prove that his land is enclosed by good and sufficient fences, and that he has adopted all other reasonable and proper precautions for the confinement of stock, and that they have nevertheless through some cause or accident beyond his control and which he could not have reasonably provided against, escaped from his land, the party complaining shall not be entitled to recover any sum unless he can show that he has fenced his land with a fence sufficient to keep out ordinary tame cattle and horse-kind".

The magistrate who heard the matter found as follows -

- "1. that on January 28, 1990 the plaintiff, Roger East was in occupation of two acres of land bounded on the north and on the east by the defendants' land on the west by a gully and on the south by Mary Smith's land;
- 2. that the land had been cultivated in tomatoes and melons which by January 28, had matured and were ready to be

reaped;

3. that on both boundaries with the defendant's land were good and sufficient fences of stone wall and barbed wire maintained by the defendants;
4. that up to January 27, the fences were in good condition to keep in tame cattle;
5. that on January 28, three strands of the wire forming part of the fence on the northern side between the plaintiff's and defendants' land were cut by persons unknown leaving a gap through which the defendants' cows escaped into the plaintiff's cultivation, and destroyed it;
6. that the defendants adopted all other reasonable and proper precautions for the confinement of their stock by regular periodical inspection of the fences;
7. that save and except the fences on the northern and eastern boundaries of the plaintiff's land no other part of the defendants' land was fenced."

The attorney-at-law for the plaintiff then appealed the decision of the magistrate. He submitted before the Court of Appeal that the defendants had not done enough to satisfy section 14 merely by showing that the boundaries between their land and that of the plaintiff were fenced. They must show that all boundaries between their land and other lands were fenced. "Enclosed" in the section means enclosed on all sides.

The Court of Appeal unanimously agreed with the plaintiff and

held that -

"the evidence which merely established that the defendants' land was fenced-in on some sides was not of itself sufficient to meet the requirements of section 14".

The defendants wish to appeal this decision and have sought your advice.

What is your advice? Give reasons.

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QUESTION 2

At about 6:30 a.m. on Sunday September 13, 1990, police Sergeant Quickeye was driving his car along Kingsway when he saw some distance ahead another car travelling in a zig-zag manner. He therefore accelerated and overtook it. While overtaking the car he saw Sammy Simms occupying the driver's seat but leaning over to his right against the door and Shirley Samms sitting beside him and leaning towards him. Further he saw Shirley's hands on the steering wheel steering the car. He then signalled them to stop and warned them for prosecution. Shirley, he then learnt, was not the holder of a driver's licence.

Shirley was subsequently charged for driving without being the holder of a driver's licence and driving without reasonable consideration for other persons using the road.

As a magistrate hearing the matter it has been submitted by the prosecution that -

1. under the Motor Vehicles and Road Traffic Act a driver is defined thus -

"driver includes any person actually driving a motor vehicle at any given time and any person in charge thereof for the purpose of driving whenever the same is stationary, on any road";

- 2. the dictionary meaning of "drive" in the Oxford English Dictionary is "to urge onward and direct the course of, to guide a vehicle or the animal that drives it; and in Chambers Twentieth Century Dictionary - "to urge along, to hurry on, to control or guide the movements or operations of",
- 3. that driving, in reference to a motor vehicle, connotes both propulsion and direction. The steering wheel is as essential for driving as the gear stick, the accelerator pedal and the braking system. In law any act may be done singly or jointly;
- 4. in the final analysis, it becomes a question of fact whether the person in charge has delegated to another the operation of any of the controls. In this case Sammy delegated the driving to Shirley.

On behalf of Shirley it has been submitted that -

- 1. in the Insurance Act as well as the Road Traffic Act (U.K.) the definition of "driver" is as follows- "driver where a separate person acts as a steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle."

The omission therefore of any reference to a steersman in the Motor Vehicle and Road Traffic Act points with certainty to the conclusion that a steersman is not a driver;

- 2. in Marsh v Moores [1949] 2K.B. 208, the authorized driver of a car sat in the passenger seat beside a person who had no driving permit but whom he allowed to drive. But he was ready if necessary to operate the handbrake. Lynskey J. said obiter that the authorized driver -

"...still retained the control and management of the vehicle. He still retained some power to control the driving of the vehicle by operating the handbrake and in instructing the other person as to how she should drive. In these circumstances it seems to me that he still remained the driver of the car".

What is your judgment? Give reasons.

QUESTION 3

The Pound District Act, which was enacted in 1984, provides for the creation of protected areas within which animals are not permitted to run at large. Sections 4 and 5 state -

"4. No animal shall be permitted to run at large within any pound district.

5. The owner or person in charge of any animal

within a pound district shall be liable for any damage caused by such animal."

Cattle are included in the definition of animal in the Act.

The Trespass Act which was enacted in 1942, is an Act of general application and covers all types of trespass and contains the following provision -

"3. In the event of cattle straying into lands unprotected by a lawful fence, no trespass shall be deemed to have been committed, and no action shall be maintainable therefore, any law to the contrary notwithstanding."

The defendant is the owner of and had in his charge a herd of cattle that from time to time ran at large upon his own land. The defendant's land is adjacent to land belonging to the plaintiff. The plaintiff's land is within a pound district constituted under the Pound District Act and was enclosed by a fence, but not a lawful fence as defined by the Trespass Act.

On several occasions the defendant's cattle to his knowledge strayed upon the plaintiff's land and caused damage to growing crops. Such a situation again occurred recently and so the plaintiff now quite fed up, brought an action for trespass to recover damages. The action was, however, dismissed by the trial judge on the ground that it was not maintainable by virtue of section 3 of the Trespass Act. The plaintiff wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 4

Write notes on -

- (i) the long title;
- (ii) the proviso;
- (iii) the function of an interpretation section.

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QUESTION 5

Weak and Strong lived in adjacent townhouses. Each townhouse had two designated areas in front of it for the parking of vehicles connected with that townhouse.

Strong who is a very popular radio personality, regularly had visitors who parked their vehicles in Weak's parking areas.

Early Sunday morning last, Weak came home to find both his parking areas occupied by vehicles belonging to Strong's friends. Strong was having his usual Saturday night party. Weak himself had been at a party and was somewhat intoxicated. In his anger he went into Strong's house, disrupted the party and threatened to 'smash in' Strong's face if he ever again found a vehicle belonging to a visitor of Strong in his parking areas.

Strong subsequently laid a charge against Weak under section 12 of the Criminal Code (the only section dealing with threats) which provides as follows -

"12. Every one commits an offence who by letter, telegram, telephone, cable, radio or otherwise, knowingly utters, conveys or causes any person to receive a threat to cause



death or injury to any person."

As the trial judge in this matter what is your judgment? Give reasons.

QUESTION 6

Mr Priority purchased Lot 120 in Opal Gardens in 1986 and built a house thereon. He also filled in with earth a large area on the southern section of the lot, then built a swimming pool on the filled in area.

In 1988, Mr. Latecomer purchased Lot 149 which adjoins Lot 120 on its entire southern boundary. Soon after, Latecomer expressed some doubts as to the exact location of the boundary line between his lot and that of Priority and thus had a survey of his property done. The result of the survey showed that the whole of Priority's fence and part of his swimming pool were south of the property boundary line by five feet and were therefore on Latecomer's lot.

Latecomer has now requested Priority to remove the fence and the offending section of the swimming pool within three months.

Priority has consulted you as to what are his legal rights, if any.

Section 2 of the Act entitled "An Act Respecting Improvements Under Mistake of Title", provides as follows -

- "2. Where a person has made lasting improvements on land, under the belief that the land is his own he shall be entitled to a lien upon the same to the extent of the amount by which the value of the land

is enhanced by such improvements; or shall be entitled or may be required to retain the land if the court is of the opinion or requires that this should be done, according as may be under all circumstances of the case most just, making compensation for the land, if retained, as the court may direct".

Advise Priority. Give reasons.

QUESTION 7

The presumption that a statute should not be given retrospective application unless it expressly provides for this or requires it by clear implication, and the presumption that a statute should not be interpreted as prejudicially affecting vested rights are distinct presumptions and should be kept that way. Discuss.

QUESTION 8

John Jones carried on a business of tobacco wholesaling from June 1, 1986 to December 31, 1988.

The Tobacco Act 1988 was passed on March 10, 1988, and came into force on January 1, 1989.

A person who carries on a business of tobacco wholesaling is required -

- (a) by section 5 of the Act to apply to the Commissioner of Taxes for a licence to carry on that business; and
- (b) by section 6 to pay to the Commissioner of Taxes a

quarterly licence fee of \$500 on the first day of each quarter in advance.

Section 2 of the Tobacco (Amendment) Act 1990 extended the application of the principal Act to a person who "is carrying on or has carried on a business of tobacco wholesaling". This amendment was deemed to have come into operation on January 1, 1989.

On January 15, 1991, Jones received from the Commissioner of Taxes an assessment in the sum of \$4,000 stated to have been made upon him under sections 5 and 6 of the Tobacco Act 1988.

Jones has come to see you as to his liability in this matter.

What is your advice? Give reasons.

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