

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1992

LEGAL DRAFTING AND INTERPRETATION
(Thursday, August 13, 1992)

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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MONA, KINGSTON, 7. JAMAICA

QUESTION 1

Corporal Speedy, 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 75 of the Road Traffic Act for failing to stop at a red light.

Section 75 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 Corporal Speedy submitted that section 79 of the Road Traffic Act was a defence to such a charge.

Section 79 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 that occasion".

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

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 judgement should be appealed.

What is your advice? Give reasons.

QUESTION 2

The Summary Jurisdiction Procedure Act provides, inter alia, as follows-

"12(1) The Magistrate shall at the conclusion of the hearing or within eight weeks thereafter at a subsequent sitting give his decision in the cause either by dismissing the complaint or by making such order against the defendant as the justice of the case requires.

(2) Where the Magistrate ceases to hold office, he may determine the case by lodging his written decision with the clerk of the court within the same period of eight weeks and the clerk shall read the decision at the earliest opportunity after notice to the parties concerned."

Tom Spooker was charged in the Magistrate's Court of St. James with the summary offence of assaulting police constable Thomas Allan in the execution of his duty contrary to section 25(1) of the Summary Offences Act.

His Worship Sydney Snail gave his decision ten months later

when he dismissed the complaint.

As attorney-at-law for the State you are instructed to advise on an appeal, and to state your reasons.

QUESTION 3

Section 10 of the Transport Act provides as follows -

"Any person found sleeping in a bus station is liable on summary conviction to a fine of one hundred dollars."

Traveller and Vagrant were arrested at 5:30 a.m. for sleeping in a bus station.

Traveller was waiting for a bus which was delayed. When he was arrested he was found sitting on a bench in an upright position and was heard to be snoring.

Vagrant was a well-known tramp who was sleeping on a bench with his head resting on a pillow and was covered with a blanket. The pillow and blanket were the belongings of Vagrant.

Advise as to the criminal liability of Traveller and Vagrant.

QUESTION 4

Arc Ltd. owned the Windsea Hotel which it insured with Reliable Insurers against loss or damage by fire under a policy of insurance issued on December 12, 1987, and renewed on each anniversary date thereafter.

On the night of March 19, 1991 the hotel was destroyed by

fire. AS a result Arc Ltd. made a claim under the policy of insurance. The claim, however, was rejected by Reliable Insurers on the ground that Arc Ltd. was in breach of condition 8(a) and/or 8(b). Condition 8 provides as follows -

"Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the Insured before the occurrence of any loss or damage obtains the sanction of the company signified by endorsement on the policy by or on behalf of the company-

- (a) If the trade or manufacture carried on be altered, or if the nature of the occupation or if other circumstances affecting the Building insured or containing the insured property be changed in such a way as to increase the loss or damage by fire.
- (b) If the Building insured or containing the property become unoccupied and so remain for a period of more than 30 days".

Arc Ltd. therefore instituted proceedings in the High/Supreme Court against Reliable Insurers.

The facts before the court were as follows-

Between January 1, 1988, and December 31, 1990, the building was occupied by student nurses under a lease with the Government. The lease came to an end on December 31, 1990. Arc Ltd. thereafter intended to convert the building into apartments for the use of visitors but the work of conversion had not begun up until the time of the fire.

During the period there was no one at all in the building. It was locked up and furniture stored therein. Arc Ltd. paid a special constable to act as a night watchman but he never went inside the building as he had no means to do so. On the night of March 19, 1991 sparks from a fire on adjoining premises caught the roof of the building and in due course destroyed it.

The court found for Arc Ltd. It held that there was no breach of condition 8(a) or 8(b) and that mere temporary absence did not involve a cessation of occupation.

Reliable Insurer wishes to appeal this judgment and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

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 taxpayer-

(a) who is over the age of 65 years;

(b) whose income is less than \$80,000; and

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 under \$80,000, 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 \$1250, being two percent 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 6

The appellant, Innocent Young, was on April 1, 1991 convicted before a judge and jury of the offence of the murder of John Bully on September 15, 1989. Innocent was born on December 20, 1970. He was sentenced to death.

He desires to appeal against the sentence and the matter has

been referred for your opinion and advice.

Section 12 of the Juveniles Act reads-

"Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years; but, in place thereof, the Court shall sentence him to be detained during Her Majesty's pleasure."

Chapter I, Sections 15 and 18 of the Constitution provide-

"15. No penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence and at the time it was committed.

18. Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter, and nothing done under the authority of any such law shall be held to be done in contravention of these provisions."

Advise him. Give reasons.

QUESTION 7

Lois, a real estate salesperson, signed an agency contract on Sunday, April 15, 1991 for the sale of five acres of land in Paradise Cay. The vendor, George, by this contract agreed to pay

to Lois the sum of \$25,000 when the property was sold, the property to be deemed to have been sold "and the commission payable on the receipt of a deposit of \$10,000 and a purchase agreement being entered into by the purchaser".

On May 5, 1991 an agreement for sale of the property was executed between George and Owen (the purchaser whom Lois had found) who also paid a deposit of \$10,000.

Lois thereafter sought her commission. George refused to pay and argued that the agency contract entered into between them was invalid as it was in breach of Section 2 of the Sunday Observance Act.

Section 2 of the Sunday Observance Act provides as follows-

"No tradesman, artificer, workman, labourer or person shall do or exercise any worldly labour, business or work of their ordinary callings upon the Lord's day or any part thereof (works of necessity and charity only excepted)".

Lois has sought your advice in this matter.

What is your advice? Give reasons.

QUESTION 8

The Accident Indemnity Act provides for payment of judgment out of the Unsatisfied Judgment Fund in cases where a successful plaintiff is unable to recover from the defendant the amount of his judgment for damages arising out of a motor vehicle accident.

The defendant, Reckless, through his negligent operation of a motor vehicle, collided with another motor vehicle operated by the plaintiff, Easydriver, in January 1991 injuring the plaintiff. The plaintiff, Easydriver, commenced an action for damages against the defendant, Reckless, in October, 1991 and judgement in his favour for \$15,000 and costs was given in February, 1992. He is unable to recover any part of his judgment from Reckless. There has been no appeal and the time for appealing has expired.

The Accident Indemnity Act, which came into operation on March 1, 1992, provides as follows-

"2. Where any person recovers in any Court a Judgment for an amount exceeding Ten Thousand Dollars, exclusive of costs, in an action for damages resulting from bodily injury to, or the death of any person occasioned by, or arising out of the operation or use of a motor vehicle by the Judgment Debtor, upon the determination of all proceedings including appeals, such Judgment Creditor may apply by way of Originating Notice to a Judge of the Supreme Court for an Order directing payment out of the Unsatisfied Judgment Fund".

The plaintiff, Easydriver, applied to a judge for an order directing payment of his judgment out of the Unsatisfied Judgment Fund, but the judge refused to make the order on the ground that this section applied only to causes of action that arose after the coming into force of the statute in question.

On appeal, what judgment would you give? Give reasons.
