

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1994

LEGAL DRAFTING AND INTERPRETATION
(Monday, August 8, 1994)

Instructions to Students:

- a) Time: 3 1/2 hours
- b) Answer 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Corporal Swift, 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 45 of the Road Traffic Act for failing to stop at a red light.

Section 45 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 Swift 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 Swift 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 judgment should be appealed.

What is your advice? Give reasons.

QUESTION 2

On January 4 , 1990, as a result of a police trap, a decoy, Miss Pebbles was sent to the house of Joseph Bay where on her arrival she saw a sign-board which stated inter alia "Dr. J.C. Bay, MDIH, FSAUI, Homeopathy Physician". Miss Pebbles found Bay at home and asked him if he was Dr. Bay and he said, "yes". He was subsequently arrested and charged for the offence of "improper use of a medical title" contrary to section 6 of the Medical Service Act.

Section 6 of the Medical Service Act provides as follows-
"Anyone who wilfully and falsely pretends to be or takes or uses the title of, a physician, doctor of medicine or general practitioner, or any name, title, addition or description, implying that he is registered by law as a physician or a practitioner in medicine shall on conviction thereof be liable to a penalty not exceeding one hundred dollars."

Bay, after his arrest, was cautioned and asked whether he was a medical practitioner, to which he replied that he was a

doctor of homeopathy. He further stated that he was not a registered medical practitioner under the Medical Service Act but had been awarded the diploma in homeopathy medicine by The Medical University of St. Andrews in London and that in many countries in Europe homeopathic physicians are registered.

The magistrate found him guilty as charged and stated as follows -

"As regards the charge of improper use of the name and title of physician, I am quite satisfied that the word "physician" is solely restricted to a duly qualified medical practitioner and ought not to be used by any other person. Physician is defined in the Concise Oxford Dictionary as 'one legally qualified in medicine as well as surgery'.

I therefore find you guilty."

Joseph Bay wishes to appeal this decision and has sought your advice.

Advise him. Give reasons.

QUESTION 3

Barry Boozer, while driving home from work one night in January, collided with a car which was parked on a corner. Immediately after the accident he went to a nearby bar to 'steady his nerves' against the shock which he had suffered in the

accident. There he drank a "double rum". He then returned to his car with the intention to drive home. However, he discovered that his car could not be driven as one of the front tyres was flat and the left front fender was bent in hard against the left tyre. He then decided to sit in the car for a while until he decided on his next move.

Shortly thereafter the police came on the scene, spoke with him and then carried out an alcoholic test on him which proved positive. He was then arrested. Subsequently a laboratory test showed that the proportion of alcohol in his blood exceeded the prescribed limit. In due course he was charged with three offences namely -

- (i) driving while under the influence of alcohol contrary to section 6 of the Road Traffic Act;
- (ii) being in charge of a motor car when unfit to drive through alcohol contrary to the said section 6 of the Road Traffic Act; and
- (iii) being on the same occasion in charge of the same motor car when the proportion of alcohol in his blood exceeded the prescribed limit contrary to section 2 of the Road Safety Act.

Section 6 of the Road Traffic Act provides -

"6 (1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be liable

on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment.

(2) Without prejudice to the foregoing subsection, a person who, when in charge of a motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs shall be liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment.

(3) A person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drug.

(4) A police constable may arrest without warrant a person committing an offence under this section."

Section 2 of the Road Safety Act provides -

"2. (1) If a person drives or attempts to drive a motor vehicle on a road or other public place, having consumed alcohol in such a quantity that the proportion thereof in his blood, as ascertained from a laboratory test for which he subsequently provides a specimen under section 3 of this Act, exceeds the prescribed limit at the time he provides the specimen, he shall be liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or both.

(2) Without prejudice to the foregoing subsection, if a person is in charge of a motor vehicle on a road or other public place having consumed alcohol as aforesaid, he shall be liable on summary conviction, to a fine not exceeding one thousand dollars or imprisonment for a term not exceeding four months or both.

(3) A person shall not be convicted under this section of being in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it

so long as there was any probability of his having alcohol in his blood in a proportion exceeding the prescribed limit.

(4) In determining for the purposes of the last foregoing subsection the likelihood of a person's driving a motor vehicle when he is injured or the vehicle is damaged, the court shall disregard, the fact that he had been injured or that the vehicle had been damaged."

Booze was subsequently found guilty by the magistrate on all three charges and fined one thousand dollars on each charge.

Booze wishes to appeal this decision. As his attorney-at-law would you appeal it? Give reasons.

QUESTION 4

Mr. Al Exporter, requiring security protection for his factory, retained the services of Easy 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 which was 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, Fingers entered the factory grounds and walked towards the factory, whereupon the dog lunged at him biting him on the hand.

Fingers lodged a complaint with the police who subsequently charged Exporter with a breach of section 2(1) of the Guard Dogs Act.

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 at all times 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 Exporter breached the provisions of Section 2(1) and was therefore guilty of the offence as charged.

Exporter wishes to appeal this decision and has sought your advice.

What is your advice? 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 Board refused to grant a licence to Whole Milk Dairies Ltd. by virtue of section 5 of the Agricultural Development Board Act which states as follows -

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

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

Whole Milk Dairies Ltd. wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 7

Your client, Mr. Joe Bloggs, has recently suffered a stroke. As a result he is unable to manage his affairs. He owns four properties and a restaurant which he managed with the assistance of Mark O'Kief.

As a result of his incapacity Bloggs asked O'Kief whether he would manage the business and his properties. O'Kief readily agreed, but told him that he, Bloggs, would have to give him legal authority in writing, to which Bloggs agreed. Bloggs then instructed an attorney-at-law who prepared the power of attorney set out below which he then duly executed and registered/recorded.

"POWER OF ATTORNEY

I, JOE BLOGGS of "Fairhaven" St. Peter, Businessman, Hereby Appoint MARK O'KIEF of "22 Windy Way" St. Johns, Businessman, to be my true and lawful Attorney for me and in my name and for my use to act and conduct and manage all my affairs as he may think fit with

power to execute documents of all kinds, to commence, prosecute or compromise legal or arbitration proceedings of all kinds, to compromise claims of all kinds and to deal with and manage any property of whatever kind or wherever situated in anyway whatever.

This Power of Attorney shall be irrevocable for a period of five years from the date hereof.

AND I HEREBY AGREE AND UNDERTAKE to ratify and confirm all and whatsoever that my said Attorney shall lawfully do or cause to be done by virtue of this Deed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Seal this 10th day of March, 1991."

In early May 1993, Bloggs' bank manager telephoned him seeking his confirmation that O'Kief was authorised to withdraw a large sum of money from Bloggs' account. Bloggs told the manager that this was not the case. Bloggs then tried to contact O'Kief but was told that he had gone to Florida for a few days. The following day Bloggs received two telephone calls from a person who stated that he had recently contracted to purchase two houses from a O'Kief but on investigating the titles discovered that they were owned by Bloggs.

Bloggs, in a very agitated state, has come to see you. He tells you that it was never his intention that O'Kief would be able to operate his personal bank account or be able to sell his properties all of which were tenanted. What he had intended was

for him to be able to do the day to day management of the restaurant business and manage the properties.

He now therefore seeks your advice with respect to the Power of Attorney he executed.

Advise him, giving reasons.

QUESTION 8

Mike Bigcash has come to see you with regard to his making a new will. He tells you that he has just learnt that new legislation (the Family Inheritance Act 1993) has been introduced which gives a court a right to override the will of a person. He is very concerned about this as his will makes little provision for his estranged wife to whom he pays substantial maintenance.

He further tells you that his will dated March 15, 1992, leaves eighty-five percent of his estate to his girlfriend who is very good to him. The remainder of his estate goes to his wife.

His nephew, who is a law student and to whom he recently expressed his fears on the matter, assured him that since the will was made before May 20, 1993, (the date the Act came into effect) the Act will not apply so he need not be concerned.

Bigcash does not want to make a new will but if his nephew is not correct he will have to do so.

Sections 2 and 3 of the Family Inheritance Act, 1993 provides as follows -

"2. Where, after the commencement of this Act, a person dies leaving:

- (a) a wife or husband;
- (b) a daughter who has not been married, or who is by reason of some mental or physical disability, incapable of maintaining herself;
- (c) an infant son; or
- (d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself;

and leaving a Will, then, if the court on application by or on behalf of any such wife, husband, daughter, or son as aforesaid (in this Act referred to as a "dependent" of the testator) is of opinion that the Will does not make reasonable provision for the maintenance of that dependent, the court may order that subject to such conditions or restrictions, if any, as the court may impose, provision be made out of the testator's net estate for the maintenance of that dependent.

Provided that no application shall be made to the court by or on behalf of any person in any case where the testator has bequeathed not less than two-thirds of the income of the net estate to a surviving spouse and the

only other dependent or dependents, if any, is or are a child or children of the surviving spouse.

3. An order under this Act shall not be made save on an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out".

Advise Bigcash. Give reasons.
