

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1996

LEGAL DRAFTING AND INTERPRETATION

Friday, August 16, 1996

**Instructions to Students**

- (a) Time 3 ½ 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.

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MONA, KINGSTON, 7. JAMAICA

**QUESTION 1**

In an action for cattle trespass, the defendants, Southern Limited, filed a special defence under section 10 of the Cattle Trespass Act which would absolve them from liability if they proved that their land was "enclosed by good and sufficient fences and that they had adopted other reasonable and proper precautions for the confinement of their stock".

Section 10 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 his 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 May 16, 1995 the plaintiff, Small Farmer, was in occupation of one acre 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 Ann Thomas's land;

2. that the land had been cultivated in tomatoes and melons which by May 16, had matured and were ready to be reaped;
3. that on both boundaries with the defendants' land were good and sufficient fences of stone wall and barbed wire maintained by the defendants;
4. that up to May 15, the fences were in good condition to keep in tame cattle;
5. that on May 16, three strands of the wire forming part of the fence on the northern side between the plaintiff's and defendant's 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 defendant's 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 10 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 10.”

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

What is your advice? Give reasons.

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## QUESTION 2

Your client, Simple Simon, executed the following agreement for sale -

### **“AGREEMENT FOR SALE OF LAND**

This Indenture for sale made the Tenth day of October, One Thousand Nine Hundred and Ninety Four BETWEEN BERT SMARTMAN of “The Mansion”, High Street, Businessman (hereinafter called “the Vendor”) of the ONE PART and SIMPLE SIMON of 22 Main Street, Capital City (hereinafter called “the Purchaser”) of the OTHER PART WITNESSETH:-

It is HEREBY AGREED as follows:

1. That the Vendor agrees to sell and the Purchaser to buy ALL THAT piece or parcel of land known as 54 Gold Street, Capital City for the sum THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)

The Purchaser shall pay a deposit of THIRTY THOUSAND DOLLARS (\$30,000.00) ( the receipt of which the Vendor hereby acknowledges.)

2. That the Purchaser agrees to raise a loan on the said property for TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) and has agreed to pay a further SEVENTY THOUSAND DOLLARS (\$70,000.00) deposit with the loan to make THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) and in the case of the Purchaser being unable to raise the loan the said THIRTY THOUSAND DOLLARS (\$30,000.00) will be refunded."

Your client informs you that he has made application to various financial institutions for a loan but the terms and conditions offered were too onerous. The reason given in each case is that the property is located in a high risk area. So although normal interest rates are between 12% - 15% for mortgages he has been offered between 25% - 30%.

Your client therefore wishes to withdraw from the sale because he is of the view that he has not been reasonably able to get a loan.

Advise him. Give reasons.

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**QUESTION 3**

Harry Drybones a 'village lawyer' drafted his will as follows -

"This is my last Will and Testament. I appoint Joe Hill to be executor. I direct my executor to divide equally with my children seventy-five per cent (75%) of all my personal belongings and money that may be left in the bank and the other twenty-five per cent (25%) of all my belongings to go to my wife. And I further state that my dwelling house is not to be sold until after the death of my wife."

Drybones died recently and the executor Joe Hill has applied to the court by way of an originating summons for the determination of the following questions under the will -

- (i) whether the expression "all my personal belongings" in the bequest and/or devise of the abovenamed deceased of "75% of all my personal belongings and money that may be left in the bank" means or includes:-
  - a. all real and personal estate of which the deceased was legal or equitable owner at the date of his death, or
  - b. all the residuary personal estate of the deceased, or
  - c. only the personal chattels and effects of the deceased and the motor truck or "pick-up" of which the deceased died possessed; or
  - d. only the personal chattels and effects of the deceased.

- (ii) whether the expression "all my belongings" in the bequest and/or devise of en abovenamed deceased namely " and the other 25% of all my belongings to go to my wife includes -
- a. all real and personal estate of which the deceased was legal or equitable owner at the date of his death, or
  - b. all the personal estate of the deceased, or
  - c. only the personal chattels and effects of the deceased moneys in the bank and the motor truck or "pick-up" of which the deceased died possessed, or
  - d. only the personal chattels and effects of the deceased and moneys in the bank of which the deceased died possessed or
  - e. only the personal chattels and effects of the deceased.

As the Judge hearing the application what is your judgment? Give reasons.

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**QUESTION 4**

On July 15, 1994, a crowd in excess of fifty persons some armed with sticks, stones and bottles gathered on Central Road. After some time the crowd became very belligerent and began throwing stones and bottles. Some persons then went into premises at Number 5, the property of Hard Worker and damaged the doors and windows to the house and the furniture inside it. They also set on fire his mini buses which were on the premises.

Mr. Worker subsequently sought compensation for the resulting damage from the Riot Compensation Authority. The Authority while accepting that there had been a riot, refused to award him compensation for the damage done to the mini buses, on the ground that section 8 of the Riot Act which was enacted in 1866, did not apply to the circumstances of this case. Section 8 of the Riot Act states as follows -

“Where any machinery, or any house, shop or building, (including any premises appurtenant to the house, shop or building) has wholly or partly been demolished or pulled down by persons riotously and tumultuously assembled together, compensation shall be payable subject to and in accordance with the provisions of this Act”.

In arriving at their decision the Authority had also considered the definition of “machinery” as stated in the Concise Oxford Dictionary, (6th Edition), to wit -

“machines; works of a machine, mechanism; organised system, means arranged for doing; group of contrivances, esp. supernatural persons and incidents, used in literary work.”



"machine" is defined as

"apparatus for applying mechanical power, having several parts each with definite functions; bicycle, motor cycle etc; aircraft; computer; person who acts mechanically; controlling system of an organization (party, war, machine)."

Mr. Worker wishes to appeal the decision of the Riot Compensation Authority and has sought your advice in this regard.

What is your advice? Give reasons.

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#### **QUESTION 5**

Your client, Tom Ginn, was charged with having the custody of illicit spirits, contrary to section 10 (3) of the Spirits Act.

The evidence before the magistrate was that on the day in question, Corporal Winehead under the authority of a warrant, carried out a search of Ginns' house. In the back garden, Winehead saw Ginn and another man sitting down at a table with two cups and a bottle between them. The man was seen to pour liquid from the bottle into both cups, but on seeing the policeman Ginn seized the bottle and threw it to the ground. The bottle was then quickly picked up with liquid still in it and sealed by Corporal Winehead. The contents were later certified to be bush rum (otherwise known as J.B.)

At the trial, the magistrate found Ginn guilty as charged.

Section 10 of the Spirits Act provides that -

"10 (1) If an officer makes oath that there is good cause to suspect that any distillery apparatus, spirits or materials for the manufacture of spirits is or are unlawfully kept or deposited in any house or place and states the ground of suspicion, the Justice of the Peace, if he thinks fit, may issue a warrant authorising the officer to search the house or place.

(2) Anyone so authorised may at any time, either by day or by night, break open and forcibly enter any house or place aforesaid, and seize any distillery apparatus, spirits or material for the manufacture of spirits found therein and either detain them or remove them to a place of safe custody.

(3) All distillery apparatus, spirits and materials for the manufacture of spirits so seized shall be absolutely forfeited and the owner of any distillery apparatus, spirits or materials for the manufacture of spirits, or the person in whose custody they are found shall be liable to a penalty not exceeding one thousand dollars (\$1,000.00) and in addition to the penalty to imprisonment for a term not exceeding twelve months.

(4) Anyone found in a house or place where the distillery apparatus, spirits or materials for the manufacture of spirits are found or in the vicinity thereof, shall be deemed, unless he proves the contrary to the satisfaction of the magistrate, to be the owner or person in charge of the distillery apparatus, spirits or materials for the manufacture of spirits."

Ginn has now consulted you with a view to appealing this decision.

What is your advice? Give reasons.

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#### QUESTION 6

Stephen, a young attorney-at-law, in drafting a lease for his client decided to redraft the clause set out below which was taken from a precedent regularly used by other attorneys-at-law in the firm.

The clause reads as follows -

"To permit the lessor and the maintenance trustee or their respective agents, either alone or with workmen at any reasonable hour in the daytime after reasonable notice except in the case of emergency to enter, the apartment and examine the state of repair and condition thereof and to take an inventory of the landlord's fixtures and fittings therein and about the same and that the lessee will repair and make good all defects or want or repair of which notice in writing shall be given by the lessor or the maintenance trustee to the lessee within three calendar months

(or sooner in case of emergency) after giving of such notice and if the lessee shall at anytime make default in the performance of any of the covenant herein before contained for or relating to the repair or decoration of the apartment it shall be lawful for the lessor (but without prejudice to the right to re-entry under the clause herein before contained) or the maintenance trustee to enter upon the apartment and repair or decorate the same at the expense of the lessee in accordance with the covenants and provisions hereof and the expenses of such repairs or decorations shall be paid by the lessee to the lessor or the maintenance trustee (as the case may be) on demand."

Stephen's redraft reads as follows:-

- "1. To allow the landlord, the trustee and their agents and employees access
  - (a) to inspect the condition of the apartment but except in an emergency only during the day and on reasonable notice; and
  - (b) to make good any failure by the tenant to comply with any notice to repair or decorate within a reasonable time.

2. To repay on demand any cost arising under paragraph 1 (b)."

Comment on the adequacy or otherwise of the redraft.

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### **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.

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### **QUESTION 8**

Jan James carried on a business of coffee wholesaling from June 10, 1991, to November 30, 1994.

The Coffee Act 1994 was passed on March 10, 1994 and came into force on January 1, 1995.

A person who carries on a business of coffee 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 an annual licence fee of \$5,000 on the first day of each year in advance.

Section 2 of the Coffee (Amendment) Act 1996 extended the application of the principal Act to a person who " is carrying on or has carried on a business of coffee wholesaling". This amendment was deemed to have come into operation on January 1, 1995.

On January 15, 1996 James received from the Commissioner of Taxes an assessment in the sum of \$15,000 stated to have been made upon him under sections 5 and 6 of the Coffee Act 1994 for the period 1991 - 1994..

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

What is your advice? Give reasons.

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