

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION, 1997**

LEGAL DRAFTING AND INTERPRETATION

(Friday, August 15, 1997)

Instructions to Students

- (a) Time 3½ hours.
- (b) Answer **FIVE** questions.
- (c) In answering any question a student may reply 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

(a) Comment on the following dictum of Lord Denning in **Magor and St. Mellons RDC v Newport Corporation (1950) 2 ALL E.R. 1226 at 1236:**

“ We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. This is an easy thing to do, and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.”

(b) By a contract of employment, machinists employed by Four Wing Garment Factory (Four Wing), were entitled to double pay on Sundays and holidays except Christmas Day, Boxing Day, New Year's Day, Good Friday and Easter Monday when they were entitled to triple pay.

In 1997, John and Simon, who are machinists at Four Wing, were required to work on Good Friday and Easter Monday in order to meet a deadline for an overseas order for shirts. Two weeks later, they noted that their pay reflected the triple time payment but not at the statutory rates they were of the opinion they were entitled to by virtue of Section 10 of the Holiday With Pay Act: that is to say six times the normal rate.

Section 10 provides as follows -

“(1) The Minister may make regulations prescribing the rate at which a person who is employed in a factory, or in any occupation in a factory, shall be paid -

- (a) in respect of any day in excess of eight hours or in respect of work in any week in excess of the normal hours of work prescribed under paragraph (a) of sub-section (1) of section 26;
- (b) in respect of work on any public holiday, other than specified in paragraph (c);
- (c) in respect of work on Sundays, Christmas Day, Boxing Day, the first week-day of January, Good Friday, Easter Monday or Whit-Monday."

(2) Where in relation to any factory or to any occupation in a factory, the appropriate rate under paragraphs (a), (b) or (c) of sub-section (1) of this section has not been fixed in regulations made under this section, such rates shall be, in the case of work on any day specified in paragraph (c) of sub-section (1) of this section, twice the rate at which the person employed would but for this section be paid , and , in the case of any other work, one and a half times the rate at which the person employed would but for this section be paid."

The Minister has so far made no regulation with respect to Section 10.

Advise John and Simon as to their entitlement.

QUESTION 2

Wallis was arrested by Constable Bow by virtue of section 20(2) of the Summary Offences Act which provides that -

“Any constable on duty must take into custody any person who within his view commits any such offence as is specified in subsection (1)”.

Section 20 (1) lists a number of street offences for which a person may be liable.

Section 12 of the same Act provides that neglect by a constable on duty under section 20(2) is a criminal offence.

Wallis was charged with a street offence under section 20(1) and also for assaulting a police constable in the execution of his duty. She was acquitted of the street offence but convicted of the assault. She now challenges this conviction on the basis that the arrest was unlawful under section 20(2) since she had not in fact committed a street offence in relation to which the duty of arrest arose.

The prosecution is concerned about the interpretation to be given to section 20(2) since it could result in problems in police officers carrying out their functions.

Advise the prosecution.

QUESTION 3

The Chief Personnel Officer (CPO) is, under the Education Act, the government's designated representative to negotiate with the recognised Teaching Service Association on terms and conditions of employment and related matters. The parties have been consulting on increased salaries for teachers. There has been no agreement on proposals put forward by the CPO, and on December 4, 1996, he reported the matter to the Minister of Finance as provided for under section 61 which provides -

“ Where the Chief Personnel Officer consults and negotiates with representatives of the appropriate recognised association with respect to matters specified in section 62 at the request of such representatives, and the Chief Personnel Officer and the appropriate recognised association are, within twenty-one days of the commencement of such consultation and negotiation, or within such further period as may be agreed upon, unable to reach agreement on any matter, the Chief Personnel Officer or the appropriate recognised association shall report the matter on which no agreement has been reached to the Minister of Finance and on such report being made a dispute shall be deemed to exist as to such matter.”

Section 62(1) provides -

“ Where a dispute is deemed to exist under section 61 the Minister shall refer the dispute for settlement to the Industrial Court within twenty-one days from the date on which the dispute was reported.”

The Minister referred the dispute to the Industrial Court on January 4, the first working day after the new Year holiday.

The Association now challenges the jurisdiction of the Court to hear the dispute saying that since the matter was not referred in time, the parties should revert to negotiations. The Association itself never referred the matter to the Court although sub-section 62(2) enabled it to do so at the expiration of the twenty-one days specified in sub-section 62(1).

As the judge in the matter, what is your decision?

QUESTION 4

Your client, Thomas Liveclean, was charged and found guilty of the offence of driving a motor vehicle after he had consumed so much alcohol that on being tested by breathalyser equipment the test revealed an alcohol level well in excess of the prescribed maximum, contrary to section 4 of the Road Traffic Act.

Section 4 states -

"Driving or being in charge of a vehicle with alcohol concentration above the prescribed limit.

4. If a person drives a motor vehicle on a road after consuming so much alcohol that the proportion of it in his breath exceeds the prescribed limit he is guilty of an offence."

The facts before the magistrate were that a week before Liveclean was stopped by the police and tested, his doctor had injected him with a pain-relieving drug containing a preservative, benzyl alcohol. The drug was released

intermittently over a period directly into the air passages of Liveclean's lungs and thus would have produced a positive reading on the breathalyser equipment. Liveclean, however, did not know of the presence of the alcohol in his body and in fact did not drink strong drink as he was a deacon in his church and opposed to the drinking of alcohol.

The magistrate held that section 4 had been enacted in the context of government's attempt to reduce the number of people who drive with alcohol in their bodies. It was clear to him that the court was required on a charge under section 4 to interpret the word "consuming" widely to embrace the ingestion of alcohol by any method and was not entitled to restrict consumption to the act of drinking as defined in the Shorter Oxford Dictionary. Further, although the injection of alcohol into the body was not a usual mode of consumption, it was nevertheless a mode of consumption caught by section 4. In addition, the marginal note to section 4 supported this view and indicates the mischief at which the section was aimed.

Your client wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

James Smith pleaded guilty to a charge of driving a lorry along Wolf Avenue and exceeding the speed limit contrary to section 14 of the Road Traffic Act. He had three previous convictions for speeding and one for dangerous driving, all within the last two years.

The magistrate imposed the following sentence -

"Current driver's licence is cancelled. Defendant further disqualified from obtaining a driver's licence for a period of two years. Licence to be handed in forthwith."

The magistrate, in imposing this sentence, stated that he was applying section 15(1) of the Road Traffic Act. Section 15 states -

"15(1) Any court before which a person is convicted under this or any other Act of an offence in connection with the driving of a motor vehicle by him -

(a) may, if the person convicted holds a driver's licence, by order suspend the licence for such time as the court thinks fit, or may by order cancel the licence and declare the person convicted to be disqualified for obtaining another licence for a definite period;

(b) may, if the person convicted does not hold a driver's licence, declare him to be disqualified for obtaining such a licence for a definite period.

(2) Any person so convicted and in relation to whom such an order has been made, if he holds a driver's licence, shall produce the licence within such time as the court may direct, and if he fails to do so and fails to prove that the licence has been lost or destroyed, he shall be guilty of an offence and liable on summary conviction therefor to a fine of eighty dollars."

In so deciding, the magistrate rejected the submission of counsel for the defence who submitted that the magistrate should have applied section 14 of the Road Traffic Act along with section 125 of the Penal Code.

Section 14 of the Road traffic Act provides -

"14(1) It shall not be lawful for any person to drive a motor vehicle on a road at a speed greater than the speed specified for that road or vehicle in any regulations (hereafter in this section referred to as "speed limit regulations") made by the Minister under this Act.

(2) Until speed limit regulations are made under this Act in respect of any road, the speed limit in respect of that road shall be thirty miles an hour.

(3) Any person who acts in contravention of this section shall be guilty of an offence and shall be liable on summary conviction -

- (a) in respect of a first offence to a fine of twenty dollars; and
- (b) in respect of a second or subsequent offence to a fine of eighty dollars; and

- (c) in respect of a third or subsequent offence to disqualification from holding or obtaining a driver's licence for a period not exceeding twelve months."

Section 125 of the Penal Code provides -

"Where a person having been convicted of an offence is again convicted he shall be liable to increased punishment, viz. double the amount of the fine attached to the offence, or imprisonment for twice the maximum period of imprisonment which might otherwise be inflicted."

James' attorney-at-law has sought your advice as to whether he should appeal or not.

What is your advice? Give reasons.

QUESTION 6

Your client, Tom Waster, was charged on an information which stated as follows -

"On Monday, March 14, 1997, one Tom Waster of Upton of the parish of St. John and within the jurisdiction of the court did unlawfully wander abroad and lodge in a certain grocery shop, not having any visible means of subsistence and not giving a satisfactory account of himself and is deemed an idle and disorderly person contrary to s.4(4) of the Vagrancy Act."

Tom was not represented at the trial but pleaded not guilty to the charge. He was found guilty and sentenced to 30 days hard labour. He then indicated to the court that he wished to appeal the decision and to retain counsel.

He now comes to see you and seeks your advice. Section 4(4) of the Act provides as follows -

"4(4) It shall be an offence for a person to wander abroad and lodge in any piazza, outhouse or shed, or in any deserted or unoccupied building, or in any mill, sugar or other works, watch house trash house or other building or within any field, pasture or enclosure, not having any visible means of subsistence, and not giving a satisfactory account of himself."

What is your advice? Give reasons.

QUESTION 7

Mary Smart, a young attorney-at-law, in drafting a release for her client, decided to redraft the release set out below which was taken from a precedent regularly used by other attorneys-at-law in the firm.

" **RELEASE**

I, James Silver of Hibiscus Path, Midtown, in the parish of St. James, for the consideration of the sum of one Thousand Five Hundred Dollars lawful money to me in hand paid by ABC Company Limited of Princess Street, Midtown have remised, released and forever discharged and by these presents do for myself my heirs executors and administrators remise release and forever discharge the said ABC Company Limited their respective heirs and assigns of

and from all causes of action, suits, controversies, trespasses, damages, judgments, executions, claims and demands whatsoever against the said ABC Company Limited which I ever had, now have, or which I, my heirs, executors or administrators hereafter can, shall or may have by reason of any matter or thing whatsoever and also by virtue of any claim or demand for damages by reason of any accident and injury to me claimed to have been sustained on or about the 5th day of April, 1963.

The aforementioned sum is accepted by the undersigned in settlement of all damages injuries and disabilities which may hereafter result from said accident, as well as for those now known to have been caused thereby.

IT IS EXPRESSLY UNDERSTOOD that said sum is paid and accepted not only for time and wages lost, expenses incurred (including legal and medical expenses, if any) and property damaged and destroyed, **BUT ALSO** in full and final settlement of all claims of every nature whatsoever caused by the said accident.

IN WITNESS WHEREOF I have hereunto set my hand this
10th day of June 1968.

SIGNED by the said
in the presence of:-

....."

Mary's draft release provided as follows -

"RELEASE

RECEIVED from THE RELIABLE INSURANCE COMPANY LIMITED on behalf of Anna Bell & Reliable Ins. Co. Ltd. the sum of Eighteen Thousand Dollars only (18,000) which I accept in full discharge and satisfaction of all claims, costs and demands whatsoever whether now or hereafter to become manifest involving injury damage and/or loss sustained arising directly or indirectly from an accident which occurred at Walmer Lodge on December 18, 1996 involving motor vehicle Registration No 4156 AD and motor vehicle Registration No. 5000 PP (passenger in taxi).

This amount is received by way of compromise only of the claim Owen Thompson has made and is not an admission of liability on the part of the said Anna Bell & Reliable Ins. Co. Ltd, AND IN CONSIDERATION THEREOF I HEREBY RELEASE AND DISCHARGE the said Anna Bell & Reliable Ins. Co.Ltd from all claims arising out of the above accident.

DATED the day of 1996.

SIGNATURE:

ADDRESS:

WITNESS:

ADDRESS:

.....

OCCUPATION:"

Comment on the adequacy or otherwise of Mary's draft.

QUESTION 8

On October 5, 1995, a tanker belonging to the Scud Oil Company Limited collided with a motor cycle driven by Sofia. Sofia was injured as was the pillion passenger, Tanya. As the Scud Oil Company was a public authority and the tanker was being operated in the course of the Company's duties at the time of the accident, the Public Authorities Protection Act applied. Section 2 (1) of the Act provided as follows:

"2 (1) Where any action, prosecution, or other proceeding, is commenced against any person for any act done in pursuance, or execution, or intended execution, of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty, or authority, the following provisions shall have effect -

- (a) the action, prosecution, or proceeding, shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of , or, in case of a continuance of injury or damage, within six months next after the ceasing thereof;
- (b) wherever in any such action judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client."

In the circumstances, therefore, Sofia and Tanya had to bring an action by April 4, 1996. They did not seek legal advice, however, until March of this year (1997), and their attorneys-at-law did not appreciate that the Scud Oil Company

was a public authority and so no proceedings were instituted before the expiration of the limitation period.

On May 1, of this year (1997), section 2 (1) of the Act was amended by extending the limitation period from six months to six years.

Sofia and Tanya have sought your advice as to whether they can now bring an action against the Scud Oil Company.

What is your advice? Give reasons.
