

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1998

**LEGAL DRAFTING AND INTERPRETATION**

(Monday, August 10 , 1998)

**Instructions to Students:**

- (a) Time: 3½ hours
- (b) Answer FIVE questions.
- (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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

### QUESTION 1

Section 10 of An Act to provide for the Control of Narcotic Drugs reads as follows -

- “ 10. A peace officer may, at any time
- (a) without a warrant enter and search any place other than a dwelling-house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;
  - (b) search any person found in such place; and
  - (c) seize and take away any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.

The accused owns and operates a small grocery store. One day, when the accused was in the store, a peace officer entered and told the accused he was searching for prohibited drugs; he had no writ of assistance or warrant. After searching the store and finding no drugs, he attempted to search the accused. The accused objected and forcibly ejected the peace officer from the store and locked the door. A charge of resisting a peace officer in the lawful execution of his duty was laid against the accused. At the trial the peace officer admitted on cross-examination that he had no grounds whatever to believe that the accused had any prohibited drugs in his store or on his person.

It is conceded that if the attempted search of the accused was illegal, the charge should be dismissed; but if the attempted search was lawful the accused should be convicted.

What is your judgment? Give reasons.

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## QUESTION 2

For one week in March 1998, Mark left an Austin A40 motor car owned by him on the street in front of his house. He had bought the car for \$1,000 as scrap and having sold various parts, subsequently advertised it for sale for \$2,000. The engine was in a rusty condition, incomplete and did not work; the car was jacked up as the four tyres had been sold. There was no gear box or electric parts and so the car was incapable of moving under its own power having been towed to Mark's house.

The car was unlicensed; there was no policy of insurance in force in respect of it and there was no certificate of road worthiness.

Mark was charged with keeping on a public road a mechanically propelled vehicle for which a licence was not in force, contrary to section 15 of the Road Traffic Act, and with using a motor vehicle on the road without an insurance policy, contrary to the Motor Vehicles Insurance Act.

Before the charges were laid, Police Corporal Jones, having seen the car parked on the road and having ascertained that the owner was Mark, pointed out to him that the car licence had expired. Mark replied that it was not a car as it could not be driven, the engine was rusty, the gear box missing, it had no tyres

and that he was waiting for a tow truck to take it away. Jones, however, was of the opinion that the car could be moved by pushing it on the rims.

Section 1 of the Road Traffic Act provides -

"1. In this Act "motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads;"

Section 15 provides

"15. If any person uses on a public road any mechanically propelled vehicle for which a licence under this Act is not in force he shall be guilty of an offence and shall be liable to a penalty not exceeding five hundred dollars."

The magistrate before whom the matter was heard found Mark guilty as charged and stated - " a motor car did not cease to be a mechanically propelled vehicle on the mere removal of the engine, tyres and gear box . The absence of an engine therefore was not conclusive."

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

What is your advice? Give reasons.

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### QUESTION 3

Sara Early, a bright university graduate, made her Will (without legal assistance) in December 1985. She appointed her sister Agatha Tough, to be her sole executrix and directed that her just debts and funeral and testamentary expenses be paid by her executrix. The dispositive part of her will stated as follows -

"I GIVE AND BEQUEATH to my daughter Ann-Marie Button who now resides in the United States of America the following -

- (1) the proceeds of life insurance policy number 2121 with Mutual Life Insurance Co. Ltd.,
- (2) Realty in property at Lot 11115 Overboro subject to -
  - (a) payment of mortgage and interest thereon to the Bank of Nova Scotia;
  - (b) payment until maturity of the premiums payable on life insurance policy number 1373 with British American Life Ins. Co. on the life of the above-named Ann-Marie Button;
  - (c) creation of a fund to provide a life interest to my Mother Mrs. May Good.
- (3) To my Mother the said Mrs. May Good -
  - (a) all my shares and other interest in the Churches Co-op. Credit Union Ltd.;
  - (b) all my shares and accruing interest in the Civil Service Mutual Thrift Soc. Ltd.;
  - (c) Life interest in property at Lot 1115 Overboro and on the death of my Mother the life interest hereby created shall revert absolutely to my daughter Ann-Marie.
- (4) I hereby give and bequeath to my Father Michael Jackson and his wife Precious half proceeds from my Mutual Growth Insurance Policy number 5095

- (5) To my nephews Mark and Phillip Tough in equal portions the other half of the proceeds from the Mutual Growth Insurance Policy number 5095.

The rest and residue of my estate I GIVE AND BEQUEATH to my daughter Ann-Marie Button.

For the faithful execution and administration of this my last Will and Testament I direct that my sister Mrs. Agatha Tough be allowed five percent of the Cash Proceeds on realization of my personal property and of any income accruing from property held on Trust."

Sara died last year and her mother a retired teacher on a small pension who was living in rented premises moved into the house at 1115 Overboro.

Last month, however, probate of the will having been recently granted, Mrs. Tough, the executrix, told Mrs. Good that she should vacate the house as she was about to sell it as required by the terms of Sara's Will.

Mrs. Good has sought your advice.

Advise her giving reasons

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#### QUESTION 4

Agricultural Products Company Limited was incorporated a few years ago and has been carrying on the business of retailers and wholesalers of a wide variety of goods.

The objects of the company according to its memorandum of association are:

- (a) Buying, selling, bartering, taking on consignment-dealing in and packing fruit, fodder and other farm produce, spraying materials and all kinds of insecticides and fungicides, power spraying outfits, hand pumps and all other commodities or material incidental to the use of the same, nails, pulp heads, paper and all materials necessary for the purpose of packing fruit and farm produce, flour, feeds and all milling produce, artificial fertilizers of all kinds, seeds, farming implements, tools and wagons and all manner of merchandise.
- (b) Buying, selling, leasing erecting, improving, managing and operating stores, storehouses, warehouses and other buildings which may be incidental or conducive to purposes of the company, and carrying on the business of storekeepers and warehousemen, in connection therewith."

Mr. Troublesome and four other shareholders have brought a minority action against the company for operating contrary to the memorandum of association - to wit carrying on the business of a general store.

As the judge presiding in the action what judgment would you give?

Give reasons.

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QUESTION 5

Mr. Lon Trapper, the monthly tenant of residential premises owned by Mrs. Alexi Leech was given notice to quit the premises by March 30, 1997. At the top of the notice was the caption -

"Reason for Notice - Premises are for sale".

In May 1997, an agreement for sale was signed between a Mr. Poole as purchaser and Mrs. Leech. By this agreement the date for completion of the sale was August 30, 1997, which was also the date of possession. The premises were to be handed over with vacant possession.

Mr. Trapper, however, refused to vacate the premises and argued that the notice to quit was not valid as it was not based on any of the grounds stated in section 16 of the Rent Restriction Act on which a court was empowered to make an order for possession.

Mrs. Leech therefore sought and obtained an order from the court for him to vacate the premises by July 30, 1997. In his reasons for granting the order, the magistrate made it clear that he agreed that under section 16 an order for possession could not be made where the reason given was that the premises were up for sale. However, he went on to say that in his view section 16 was not to be considered exhaustive -

"In my view section 16 does not exclude a jurisdiction to make an order for possession in the circumstances before me since it must have been an oversight on the part of the legislature in not making specific statutory provisions to cover the case in point. Where fetters are apparently imposed by the legislature on the rights of an owner to deal with his property as he considers fit, if such fetters are shown to be too onerous then it must be assumed that it was never so intended by the legislature".



Mr. Trapper successfully appealed this decision. The decision of the Court of Appeal was handed down by Mr. Justice Wise who said inter alia -

"...the true legal principle is that if the legislature by clear words imposes fetters, however, onerous on the disposition of property by individuals it must be construed as a matter of policy originated by the executive and given expression to by the legislature. It is not part of a Court's function to say that the fetters are onerous and because they are onerous there resides in it an inherent power not to give effect to the clear legislative intent."

Mrs. Leech is very unhappy with this decision and has therefore sought your advice with a view to appealing to the Privy Council.

What is your advice? Give reasons.

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### QUESTION 6

- (a) How does an interpretation act assist in the interpretation of legislation?
- (b) Harry recently purchased a lot of land for which he received a registered title under the new land registration system. Last week Monday he completed the fencing of the lot as he planned to keep a few cows in it. When he returned to the land on Thursday, however, a section of the fence on the northern and southern boundaries had been removed. On making enquiries from the neighbours, his neighbour on the northern boundary, Miss Ifill, told him that she had removed part of both fences as

she claimed she had a right of way over Harry's lot in order for her to reach the main road from her land.

Harry's title, however, has no such easement noted on it and is therefore of the view that Miss Ifill's right has been extinguished under the new land titling system.

The preamble to the Land Titles Act states as follows -

"whereas it is expedient to give certainty to the Title to Estates in Land and to facilitate the proof thereof and also to render dealings with Land more simple and less expensive be it therefore enacted...."

Section 55 of the Act provides -

"Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise which but for this Act might be held to be paramount or to have priority the proprietor of land or of any estate or interest in land under the operation of the act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be described or identified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title instrument evidencing the title of such proprietor not being a

Preferential and prior rights defeated in favour of registered proprietor.

purchaser for valuable consideration or deriving from or through such a purchaser.

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was bought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenants of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument."

Advise Harry as to whether Miss Ifill's right has been extinguished.

Give reasons.

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### 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 all 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, 1997."

In early May 1998, 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 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.

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### QUESTION 8

Your client Morton Phillips was convicted on July 15, 1998 of unlawfully and carnally knowing a girl named Kelly Green on March 1, 1998 when she was fourteen years and eleven months old - contrary to section 5 of the Criminal Law Amendment Act 1985 as amended by section 7 of the Prevention of Cruelty to Children Act 1998.

Section 5 of the Criminal Law Amendment Act provides -

"Any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years and under the age of sixteen years shall be guilty of an offence.

Provided that prosecution shall be commenced for an offence under this section not more than three months after the commission of the offence."

By section 7 of the Prevention of Cruelty to Children Act 1998 which came into effect on May 25, 1998 -

"The limit of time mentioned in the proviso to section 5 of the Criminal Law Amendment Act 1985 shall be six months after the commission of the offence."

At the trial it was submitted by Tuck Priester (who was then counsel for Phillips) that

"Where a section is ambiguous it must be interpreted in favour of the prisoner. Section 7 of the Prevention of Cruelty to Children Act in extending the time within which proceedings for offences created by section 5 of the Criminal Law Amendment Act does not assume to affect offences which had been committed before the Act came into operation. It seems to be a very strong thing to hold that a defence which was open to a man at the time he did the act complained of has been taken away by the retrospective operation of a subsequent statute. Here to hold that section 7 is retrospective will take away the defence that was open to the accused - namely that proceedings had not been taken within three months of the offence."

Your client now wishes to appeal. Advise him on the merits of an appeal.

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