

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1999

LEGAL DRAFTING AND INTERPRETATION

(Wednesday, August 11, 1999)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

Esau was convicted of the offence of interfering with a motor car without the knowledge or permission of the owner and contrary to the Road Traffic Act. At the time when he was caught interfering with the car, it was parked in a garage on the owner's private property.

"Road" is defined in the Road Traffic Act as follows -

"Any street, road or open space to which the public are granted access, any bridge over which a road passes and includes any privately owned street, road or open space to which the public are granted access either generally or conditionally."

Section 5 of the Road Traffic Act states as follows -

"5. Any person who, without knowledge or permission of the owner, in any way interferes with a motor vehicle while the vehicle is on the road or parking place shall be guilty of an offence."

The judge, in handing down judgment, said -

"It was submitted on behalf of the accused that for him to be guilty of the offence it had to be committed while the car was in a public place, but I cannot agree. It would be absurd to think that the accused should get away having committed an offence under the Act and doing so with a view to stealing the car. And I have good authority for this. Lord Blackburn in *River Wear Commissions v Adamson* stated that a court should interpret an Act so as to avoid a result which was manifestly absurd."

Esau was sentenced to two years imprisonment. His attorney-at-law has sought your opinion as to whether he should appeal the conviction.

Advise him. Give reasons.

QUESTION 2

Arawak Company (Arawak), which manufactured engineering products, entered into a written contract with Carib Company (Carib) to sell Arawak products. The contract included the following provisions with regard to promoting the sale of Arawak products -

"7. (a) Carib will use its best endeavour to promote and extend the sale of Arawak's products.

(b) It shall be a condition of this contract that -

(i) Carib shall use its representative to visit the six firms whose names are listed in the Schedule hereto at least once in every week for soliciting orders for panel presses;

(ii) that the same representative shall visit each firm on each occasion unless there are unavoidable reasons preventing the visit being made by that representative in which case the visit shall be made by an alternative and Carib will ensure that such a visit is always made by the same alternative representative.

8. Carib undertakes, at its expense, to look after Arawak's interests carefully and will visit Arawak's customers regularly, particularly those customers principally in the motor car and electrical industries whose names are set out on the list attached thereto and initialled by the parties hereto, and will give all possible technical advice to the customers."

Fifteen months after the contract was executed a dispute arose between the parties and in accordance with the contract, the dispute was referred to an arbitrator.

Between January and June, 144 visits by representatives of Carib ought to have been made to the scheduled firms but instead only 125 were made. For the first two weeks in July no visits were made. Arawak therefore sought to terminate the contract.

The arbitrator found for Carib and stated his reason thus -

"Although there was a presumption that if the word 'condition' was used in a formal contract it indicated a term of the contract, breach of which, however small, gave rise to a right to repudiate, the word should not be given that meaning if such a construction produced a result so unreasonable that the parties could not have intended it."

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

What is your advice? Give reasons.

QUESTION 3

Your Constitution provides -

"40. (1) A member of the House of Representatives shall vacate his seat in the house where -

- (a) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party."

Vince, a member of the House who was elected as a member of the O.P.P. party which now forms the Opposition, was expelled by the party when he declared himself an independent member.

The leader of the O.P.P. now purports to act under a 1998 Amendment to the Constitution, to wit section 40A -

40A (1) states -

"Where circumstances such as are referred to in section 40 (1) (a) arise, the leader in the House of Representatives of the party whose member has resigned or been expelled as the case may be, shall so inform the Speaker in writing of those circumstances and the Speaker shall, at the

sitting of the House of Representatives next after he is so informed, make a declaration that the member has resigned from or has been expelled by the party, as the case may be."

However, 40 (A) (5) provides -

"Standing Orders shall make provision for the identification and recognition of the leader in the House of Representatives of every party and for otherwise giving effect to this section."

No Standing Orders have been made and the existing ones do not provide for identification or recognition of the leader of any party in the House. The Prime Minister and the Opposition Leader were all members of the House of Representatives when the Constitutional Amendment was passed.

The Opposition Leader wishes to have the Speaker enforce section 40A (1).

Advise him.

QUESTION 4

In November 1998 at an ecumenical church service held in the National Convention Hall, a number of political leaders were in attendance.

After the reading of the first lesson by the Prime Minister, a church member of one of the participating churches, Andy, stood up at the rear of the Hall and addressed the congregation and said, "I call all members of the church to disassociate themselves from this travesty in the face of heaven by leaving the hall now". At this point there was general confusion in the hall and Andy was removed.

At the end of the reading of the second lesson by the Leader of the Opposition, another member of a church, Zorro, shouted protestingly from the balcony of the hall the

words "Oh, you hypocrites, how can you use the words of God to justify your policies?" Zorro was then escorted from the hall and took no further part in the service.

The Pastor in charge of the service, disassociated himself from the conduct of both men and described their behaviour as improper.

Zorro and Andy were subsequently charged with indecent behaviour contrary to section 5 of the Ecclesiastical Courts Jurisdiction Act 1860. Section 5 states -

"5. Any person who shall be guilty of riotous, violent or indecent behaviour in any place of religious worship whether during the celebration of divine service or at any other time shall on conviction thereof before a magistrate be liable to a penalty of not more than \$500 or if the magistrate thinks fit to prison for any term not exceeding one month."

The magistrate who heard the matter convicted them and said that the word "indecent" had to be construed in the context of the time when the Act was passed. It did not refer to behaviour tending to corrupt or even deprave, nor was it used with any sexual connotation but in the context of "riotous, violent or indecent behaviour". He further stated that an act done during divine service might be highly indecent when it would not be so at another time.

Zorro and Andy wish to appeal this judgment and have sought your advice.

What is your advice? Give reasons.

QUESTION 5

Alicia Alago, a hairdresser, carried on her business in a room attached to her house where customers came and were attended to, paying for the service provided. She kept a young assistant who assisted her in cutting customers' hair. Alicia carried on no other business and no articles were bought or sold on the premises.

On Sunday, March 5, 1999, Alicia cut the hair of several customers, for reward, as she had done almost every Sunday for the last twenty years. On this Sunday, however, she was charged with carrying on the trade of hairdressing upon the Lord's Day, contrary to section 2 of the Sunday Observance Act.

Section 2 of the Act provides as follows -

"No tradesman, artificer, workman, labourer or other 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) and that every person so offending shall for every such offence forfeit the sum of One Thousand Dollars."

Before the court it was submitted on behalf of the prosecution that Alicia's activities came within the words of the section. The section was intended to strike at persons exercising "handy labour" on Sunday, and that Alicia did work with her hands in cutting the hair of her customers. Further, as a hairdresser is a tradesman, she carries on the trade of haircutting in the same way as a carpenter or a smith carries on the trade of carpentering or shoeing horses.

For the defence it was submitted that Alicia is not a tradesman, artificer, workman or labourer or other person within the meaning of the section. She is not a tradesman because that word is used in the ordinary sense of a person who buys and sells. A hairdresser is not an artificer which denotes a skilled workman who makes something. She is not a workman or labourer because those words are intended to cover persons in the employment of others. Finally, she does not come within the words "or other person" since those words ought to be restricted to those previously specified.

Alicia was found guilty and fined \$10,000. She wishes to appeal this decision and has sought your advice.

Advise her. Give reasons.

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QUESTION 6

A private hospital, Bio Medical Hospital Ltd., built an apartment complex in 1997 to provide housing facilities at a subsidized rental for the staff of the hospital. Eighty-five percent of the apartments have been rented to members of staff including administrative and clerical staff. The remaining fifteen percent were rented to private persons.

In 1998 the Collector of Taxes assessed the land on which the apartment building stands for purposes of land taxes. The hospital administration were quite surprised when they received the notice of assessment as they had been advised at the time of construction of the building that neither it nor the land would be subject to the payment of any taxes by virtue of section 8 of the Private Hospital Act. Section 8 states as follows -

"8. Subject to liability for certain local improvements as provided in the Local Authorities Act, a private hospital and any and all property, real or personal, of the hospital, including:

- (a) property of which the hospital is beneficial owner, and
- (b) property owned by a company controlled by the hospital and which has as its shareholders or members only non-profit making bodies,

if that property is used for hospital purposes, is exempt from taxation of any kind; and for the purposes of this section property used by the hospital for necessary parking facilities, interns' quarters, school of nursing, nurses' residence, power house or laundry shall be deemed to be used for hospital purposes."

What advice would you give the hospital administration? Give reasons.

QUESTION 7

Advise on the usefulness of the following Power of Attorney. It has been properly executed and registered/recorded.

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"BY THIS POWER OF ATTORNEY

NATIONAL COMPANY LIMITED a company incorporated under the laws of and carrying on business within Belize (hereinafter called 'the Company') and having its Registered Office in the City of Belize hereby appoints **ROBERTO ROJA** of the city of Belize to be Attorney of the Company from the 21st day of January, 1998 to such time as this said Power of Attorney shall have been expressly revoked in writing, in any country of the world for and on behalf of the Company to rent office space wherever necessary for and on behalf of the Company, to open bank accounts and to be signatory to these accounts, to do any and all transactions pursuant to the Company's purpose as set forth in its charter, and to make and sign agreements to accomplish the foregoing purpose, in general to do, execute and perform any act, deed, matter or thing, whatsoever that ought to be done, executed or performed, of every nature and kind whatsoever as fully and effectually as we could do if personally present.

IN WITNESS WHEREOF the said
NATIONAL COMPANY LIMITED
has caused its Common Seal to be
affixed the 21st day of January,
1998."

QUESTION 8

McDuff died on January 15, 1998, intestate. Surviving him were his widow, Calpurnia, a son, Othello, aged 7, and a daughter, Cleo, whom the couple adopted on December 10, 1992, pursuant to an adoption order of the court. McDuff and Calpurnia were married on August 10, 1988. For each it was a first marriage.

On April 1, 1998, letters of administration to the estate of McDuff were granted to Calpurnia.

Section 15 (3) of the Adoption Act reads as follows -

"15 (3) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adoption ..."

With effect from March 1, 1993, Section 15 was repealed and replaced by the following -

"15 (1) For all purposes, as from the date of the making of an adoption order -

(a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and

(b) the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted child, as if the adopted child had been born in lawful wedlock to the adopting parent.

(2) The relationship one to another of all persons whether the adopted child, the adopting parent, the kindred of the adopted parent, the parent before the adopting order was made, the kindred of the former parent or any other person, shall for all purposes be determined in accordance with subsection (1)."

Under the relevant law governing the distribution of an intestate's estate, one-third of the estate of a deceased person passes to his surviving spouse, and the remaining two-thirds in equal shares to his legitimate children who survive him.

Advise McDuff's personal representative, Calpurnia, as to how the estate should be distributed.
