

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTAL EXAMINATIONS, 2000

LEGAL DRAFTING AND INTERPRETATION

(Thursday, August 10, 2000)

Instructions to Students

- (a) Time: 3½ 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 territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Your client, Alice Hardworker, worked in a steel factory for many years. The air in the factory was often laden with dust from the particles of sand and silica produced from the grinding and shot-blasting process which was produced when the sand was removed from the steel as it emerged from the mould. The situation was exaggerated by the fact that the factory was not properly ventilated as required by the Factories Act.

In 1990, the operators of the factory introduced very modern equipment and renovated the factory. These changes eliminated the dust problem that had existed for many years.

In 1997, Alice became very ill and was diagnosed as having pneumoconiosis, a disease in which slowly accruing and progressive damage is done to the lungs of the patient. According to the medical evidence a person susceptible to the disease and who inhaled noxious dust over a period of a year would have suffered substantial injury before it could be discovered by any means known to medical science.

In 1999, you instituted legal proceedings against the owners of the factory for negligence and/or breaches of statutory duty. As a result of the changes at the factory after 1990, however, a breach of duty by the owners could no longer be established as a basis for the causation of the injuries after 1990.

The matter was heard before Strict J. who held that the action was statute-barred by virtue of section 2 of the Limitation of Actions Act and this was so notwithstanding section 15 of the Act.

Section 2 states as follows:

"2. The following action shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say, actions founded on tort."

Section 15 states as follows:

"15. Where, in the case of any action for which a period of limitation is prescribed by this Act, either –

- (a) the action is based upon the fraud of the defendant or his agent, or
- (b) the right of action is concealed by the fraud of any such person as aforesaid, or
- (c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake or could with reasonable diligence have discovered it."

Alice wishes to appeal this decision. What is your advice? Give reasons.

QUESTION 2

Rabble Rowser was convicted by a magistrate of the offence of speaking at a meeting in a public place in respect of which meeting no notice had been given contrary to section 4 of the Public Meetings Act.

The facts presented to the court by the prosecution were that on Monday, January 25, 2000 at 4:30 p.m., a large crowd had gathered at Queen's Square

with many persons bearing anti-government placards and slogans. Soon thereafter, Rowser began addressing the meeting over a loudspeaker on issues that were political. Assistant Superintendent Forbes, then approached Rowser and informed him that he was the officer in charge of that police division and warned him that he could be prosecuted for holding and taking part in a public meeting in a public place without notifying the police officer in charge of the area.

Rowser replied that he would continue to address the meeting and to march. This he continued to do. As a result later in the evening he was charged accordingly. The particulars of the charge read as follows: -

"Rabble Rowser on January 25, 2000, at a place known as Queens Square held and organized a meeting in respect of which no notice had been given under s.3 of the Public Meetings Act."

Sections 3 and 4 of the Public Meetings Act provide –

"3. Any person who desires to hold a meeting in a public place shall, not less than forty-eight hours and not more than one month previous to the time at which he desires to hold such meeting, notify the police officer in charge of the area in which the meeting is to be held of his intention to hold the said meeting and of the time and place at which the said meeting is to be held.

4. Any person who holds, organizes or speaks at any meeting in a public place in respect of which no notice has been given under section 3 shall be guilty of an offence."

Rabble Rowser wishes to appeal this decision and has sought your advice.

Advise him. Give reasons.

QUESTION 3

In an action for cattle trespass, the defendants, Overseas Estates Ltd., filed a special defence under section 14 of the Trespass Act which would absolve them from liability if they proved that their land was "enclosed by good and sufficient fences and they had adopted all other reasonable and proper precautions for the confinement of their stock".

Section 14 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 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 June 28, 2000, the plaintiff, Roger West, was in occupation of the six acres 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 Francis' land;
2. that the land had been cultivated in tomatoes and melons which by June 28, had matured and were ready to be reaped;
3. that on both boundaries with the defendant's land were good and sufficient fences of stone wall and barbed wire maintained by the defendants;

4. that up to June 27, the fences were in good condition to keep in tame cattle;
5. that on June 28, three strands of the wire forming part of the fence on the northern side between the plaintiff's and defendants' 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 for the fences on the northern and eastern boundaries of the plaintiff's land no other part of the defendants' 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 14 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 14."

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

What is your advice? Give reasons.

QUESTION 4

Since February of this year (2000) your client, Jim Jones, has had his Sunday morning sleep interrupted by the noise from a power mower and hedge trimmer being used by his neighbour across the street.

His neighbour, Hy Wildblood, who moved into the neighbourhood in May has insisted on mowing his lawn and trimming the hedges in his garden every Sunday morning, beginning at about 5:00 a.m. Even during the drought period he has done so.

Repeated requests by Jones for Wildblood to desist from this activity so early in the morning or attach a silencer to the mower have fallen on deaf ears.

In mid-June (2000) Jones attended a function that went on early into Sunday morning and which saw him getting home at 4:00 a.m. True to form, at 5:00 a.m. Wildblood started up his mower and began mowing a very parched lawn.

The noise startled Jones who had just fallen asleep. He jumped out of bed and clad only in shorts raced across the street and accosted Wildblood. He then said to him, "If you don't stop mowing your lawn in two minutes I will beat you up and break every bone in your head." Jones then returned to his house. Shortly thereafter, Wildblood shut off the mower. Later on that same day, Jones went over to Wildblood's house and shouted that if Wildblood ever attempted to mow on any Sunday morning again he would beat him up.

On the following Monday, Wildblood laid a charge under section 31 of the Criminal Offences Act against Jones. Section 31 states as follows:

"31(1) Every one commits an offence who by letter, telegram, telephone, cable, radio or otherwise, knowingly utters, conveys or causes any person to receive a threat to cause death or injury to any person."

The matter was heard last week and Jones was found guilty as charged. The judge in giving his judgment said that he was of the view that section 31 included face to face threats and the case of R v Wallace (1970) 74 WWR 763 was authority for this position.

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

Advise him. Give reasons.

QUESTION 5

Art Publishers Ltd., who were suppliers of books and stationery, had insured their stock-in-trade against fire and windstorm with Indies Insurance Co. in order to secure a loan, which the firm had borrowed, from Royal Commercial Bank. The policy contained the following provisions:

- "(a) Loss, if any, payable to the Royal Commercial Bank."
- "(b) ... the company agree with the assured (subject to the terms and conditions enclosed hereon which are to be taken as part of this policy) that if after payment of the premium the property above described, or any part thereof, shall be destroyed or damaged by fire or windstorm at any time between July 10, 1998 and July 9, 1999, the company will make good by payment or reinstatement or

repair all such loss or damage not exceeding the sum set out in this policy.”

The blank endorsement printed on the back of the policy was filled in and executed.

On September 12, 1998, the building in which Art Publishers Ltd. carried on business was destroyed by hurricane and its stock-in-trade destroyed. Royal Commercial Bank sought to recover the sum due under the insurance policy but other creditors of Art Publishers Ltd. sought to prevent this on the basis that the Bank had acted contrary to section 15 of the Bank Act. Section 15 states as follows: -

- “15. The Bank may
- (a) open branches, agencies and offices;
 - (b) engage in and carry on business as dealers in gold and silver coin and bullion;
 - (c) deal in, discount and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or national, British, foreign, and other public securities;
 - (d) lend money or make advances upon the security of, and take as collateral security for any loan or advance made by it, lien or other notes, conditional sales contracts or any other instruments or agreements made or entered into respecting the sale of goods wares and merchandise, or moneys payable thereunder; and
 - (e) engage in and carry on such business generally as appertains to the business of banking.”

The Royal Commercial Bank has sought your advice. What is your advice? Give reasons.

QUESTION 6

The Secretary of a cooperative society has written to you as follows:

“Dear Attorney,

A problem has arisen involving different interpretations of rule 42 of our new Rules. This rule states as follows:

‘The Board of Directors is vested with the power and authority to purchase, lease, or otherwise acquire real and personal property and to borrow money for that purpose upon the favourable vote of at least three-fourths of all the Directors.’

Some of the Directors are of the view that this provision means that decisions of this nature must be by a majority vote of at least three-fourths of the total membership of the Board. This has meant that on a number of occasions, an otherwise properly constituted meeting of the Board has been unable to make a decision on an urgent matter to do with the acquisition of property because there were less than twelve Directors present at a meeting (the Board consists of fifteen Directors) or that less than twelve persons, although constituting the required majority of the Directors present, voted in favour of a proposal.

Other Directors, however, are of the view that when the rule speaks of the “favourable vote of at least three-fourths of all the Directors”, it is saying that the

decision requires a three-fourths, or more, majority of the Directors who are present at a duly constituted meeting of the Board and that this would mean the favourable vote of less than twelve Directors, if the attendance was less than full. Rules 43 and 44 seem to support this view by providing that: -

"43. The Directors shall meet together for the dispatch of business at least once in every three months, and subject thereto they may adjourn and otherwise regulate their meeting as they think fit.

Questions arising at any meeting shall be decided by majority vote. In case of any equality of votes the Chairman shall have a second or casting vote.

44. The quorum necessary for the transaction of the business of the Directors shall be a bare majority of the Directors.

This is our current dilemma and we would appreciate your opinion at your earliest convenience as this is a matter of great urgency."

What is your advice? Give reasons.

QUESTION 7

Tamara Jacobs, a young attorney-at-law who was recently admitted to practice, was instructed by the senior partner in her firm to prepare a lease for a small commercial complex. She was further instructed to follow the terms of an

existing lease. On reading the lease, she noted the following covenants with respect to repairing and painting the premises: -

"4. When where and so often as occasion shall require well and sufficiently to repair renew uphold support maintain pave purge scour cleanse glaze empty amend and keep the premises and every part thereof (including all fixtures and additions thereto) and all floors walls columns roofs canopies lifts and escalators (including all motors and machinery therefor) shafts stairways fences pavements forecourts drains sewers ducts flues conduits wires cables gutters coils and other pipes tanks cisterns pumps and other water and sanitary apparatus thereon with all needful and necessary amendments whatsoever (damage by any of the insured risks excepted so long as the Lessor's policy or policies of insurance in respect thereof shall not have become vitiated on payment of the policy moneys or be refused in whole or in part in consequence of some act or default of the Lessee) and to keep all water pipes and water fittings in the premises in good repair and to be responsible in all respects for all neighbouring property or to the respective owners or occupiers thereof through the bursting overflowing or stopping up of such pipes and fittings occasioned by or through the neglect of the Lessee or its servants or agents."

"5. To paint with two coats at least of good quality paint or such other paint as may be first approved by the landlord and in a colour approved by the landlord in a proper and workmanlike manner at least in every third year and in the last year of the said term but not more than once in any continuous period of three years (whether determined by effluxion of time or otherwise howsoever) all the outside wood stucco and ironwork and other outside parts of the demised premises heretofore usually painted or which

should be usually painted and any additions thereto and at the same time to creosote distemper or colour or whitewash or otherwise treat all other outside parts of the demised premises as have usually heretofore been so treated or should be so treated all such works as aforesaid to be done to the approval of the landlord."

Tamara, however, was of the opinion that both covenants could be improved upon without changing the intent of the covenants. She therefore re-drafted them as follows: -

"4.(1) To repair and maintain the interior and exterior of the demised premises including:

- (a) all fixtures and additions thereto,
- (b) all elevators and escalators,
- (c) all conduits, wires and cable,
- (d) all water and sanitary apparatus

except for damage insured against by the lessor so long as the policy of insurance has not been invalidated by any act of the lessee.

(2) The lessee shall be responsible for all damage to the premises or neighbouring property or the owners thereof through the bursting, overflowing or stopping up of the pipes and fittings caused by the lessee or his servants or agents.

5. To paint the outside of the property in every third year of the term and in the last year of the term, however it ends. On each occasion the tenant must:

- (a) use good quality paint and materials, and

- (b) obtain the landlord's approval of the colour scheme and the materials used."

Discuss whether or not Tamara has successfully re-drafted the covenants.

QUESTION 8

Arthur Toorich 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 Inheritance Act 1998) 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 and his unmarried daughter who lives with his wife and who has supported her mother against him.

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, 1998, (the date the Act came into effect) the Act will not apply so he need not be concerned.

Toorich 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 Inheritance Act, 1998 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 restriction, 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 Toorich. Give reasons.
