

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2006**

**LEGAL DRAFTING AND INTERPRETATION**

**(WEDNESDAY, AUGUST 2, 2006)**

**Instructions to Students**

- (a) Time: **3 ½ 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.
- (e) Answers should be written in ink.

---

**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 Sports Wear Garment Factory (Sports Wear), 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 2005, Jon and Ryman, who are machinists at Sports Wear, were required to work on Christmas Day and Boxing Day 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 5 of the Holiday With Pay Act: that is to say six times the normal rate.

Section 5 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 regulations with respect to Section 5.

Advise Jon and Ryman as to their entitlements.

---

## **QUESTION 2**

Joy and Vincent Jones were married on December 8, 1989. They were divorced in 2003, the decree nisi being granted on July 9 and the absolute on September 18. In March 2005, Joy filed an application under the Family Act 2003 which came into effect on April 1, 2003, seeking a declaration that she is entitled to a half share in the former matrimonial home at Baynor Terrace, the furniture therein and the car A2927V.

Additionally she sought injunctions to restrain Vincent from interfering with her quiet enjoyment of the former matrimonial home and from bringing women into the said home.

Counsel for Vincent has applied to the court for the application to be dismissed. He submits that the applicant should have obtained the leave of the court before bringing these proceedings and, this not having been done the proceedings are not properly before the court. He relies on subsection (3) of section 3 which provides as follows –

“3(3) Where a decree nisi of dissolution marriage or a decree of nullity of marriage has been made proceedings within paragraph (d)(i) or paragraph (e) of the definition of “matrimonial cause” (not being proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings in respect of the maintenance of a party) shall not be instituted after the expiration of 12 months after the date of the making of the decree or the day of the coming into force of this Act, whichever is the later, except by leave of the court in which the proceedings are to be instituted.”

The definition of “matrimonial cause” provides *inter alia* – “matrimonial cause” means:

- (a) proceedings between the parties to a marriage in respect of
  - (i) the maintenance of one of the parties to a marriage; or
  - (ii) the custody, guardianship or maintenance of, or access to, a child of the marriage
- (b) proceedings between the parties to a marriage in respect of the property of those parties or either of them being proceedings in relation to concurrent, pending or completed proceedings for principal relief between the parties.”

The application therefore is clearly within the terms of the subsection and the question is whether the leave of the court should have been sought before it was brought.

Counsel for Vincent submits that the subsection means that the leave of the court must be obtained for the institution of proceedings –

- (a) after the expiration of 12 months after the date of the making of the decree, or
- (b) after the date of the coming into force of this Act, i.e. after April 1, 2003, whichever is the later.

Counsel for Joy, however, submits that the subsection means that the leave of the court must be obtained for the institution of proceedings –

- (a) after the expiration of 12 months after the date of the making of the decree; or
  - (b) after the expiration of 12 months after the date of the coming into force of this Act, i.e. after April 1, 2004
- whichever is the later.

As the judge hearing the matter what is your judgment? Give reasons.

### **QUESTION 3**

Harry Hayes is the owner of a motorcar that had broken down and could not be driven. The carburettor of the car had malfunctioned and its starter did not work. Harry decided to park the car outside his house on the road. He jacked the car up on bricks so that the wheels were off the ground and he removed the battery from the car.

Harry suspended the policy of insurance for the car. He intended to make it effective again as soon as he had put his car into running order.

On February 10, this year another motorcar collided with Harry's stationary car. On the same day Harry had been working on the car and had cleaned it, and lowered it to the ground, sent its batteries to be recharged, removed the broken carburettor and fitted a new carburettor into the car, and repaired the starter. The car still could not be driven, however, since the engine was still not working nor was there any fuel in the tank. Harry had no intention of driving the car on February 10, or of moving it from its position on the roadway.

Harry was charged under section 3(1) of the Road Traffic Act which provides:

#### *"Part II*

#### *Provision against third-party risks arising out of the use of Motor Vehicles*

"3(1) It shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle such a policy of insurance in respect of third-party risks as complies with the requirements of this Part of this Act."

The Heading to Part III of the Act is “Provisions as to Driving Motor Vehicles”. In Part III, section 20 prohibits a person from driving a motor vehicle on a road without a driver’s licence and section 30 makes it an offence for a person to drive a motor car that is in a defective condition.

Harry contends that the car was not being used by him on February 10 because use of a motor vehicle did not include putting it onto a road and maintaining it in one position when physically it could not be driven and was not available for use as a motor vehicle.

Harry has sought your advice.

Advise Harry.

---

#### **QUESTION 4**

Last year Anna Morton prepared her Will without legal assistance. The Will was properly executed. In it she appointed her brother John Goodman as executor. Ms. Morton disposed of her estate as follows:

1. I give my daughter, Rita Morton, my precious 1980 Jaguar car, my boat, jet-ski, antique furniture and other effects. After her death anything that is left is to go to my brother Roy Belle.
2. My house at No. 15 Lands End and all my money is to go to my son Jason.

3. To my niece Kay-Kay I give my silver jewellery box and all of its contents.
4. All the rest of my property I leave for my mother Mabel Lou.

Anna died suddenly last month. Her brother Roy Belle had predeceased her. At the time of her death, Anna, also owned government bonds, several expensive oil paintings and an acre of land in Tootsie Hill. In addition she was owed \$3,000 in rent accruing from the lease of Tootsie Hill.

Two weeks before her death Anna had traded in her 1980 Jaguar for a 2003 model. Anna also had two nieces, Kay Wells and Karen Goodman, whom she affectionately called Kay-Kay.

John Goodman has sought your advice on the following:

- (i) The beneficiary of the gift at clause 1.
- (ii) Whether the beneficiary of the gift at clause 1 is entitled to any of the undisposed part of the estate.
- (iii) Whether Jason is entitled to any of the undisposed part of the estate.
- (iv) Which of the two nieces is entitled to the jewellery box and its contents.

Advise John Goodman.

---



## **QUESTION 5**

Cinderalla Adams, a grocer, delivered to the residence of Joseph Touchstone, a nightwatchman employed at Port Royal, consignments of coffee amounting in all to 665 kgs. Touchstone sold the coffee to American seamen, who took it on board their ships and either consumed it there and then or exported it. He accounted to the grocer, Miss Adams, for those sales, and was paid commission on them.

The export of coffee without a licence is prohibited by the Export of Goods (Control) (Consolidation) Order, 1999, but, as a matter of grace, the customs authorities allow seamen to take on board small quantities of coffee for their own consumption.

Informations/complaints were preferred against Touchstone, as agent of the exporter, for contravening section 3, subsection 1 of the Import, Export and Customs Powers Act, which sub-section imposes penalties on the exporter or his agent of 'any goods ... brought to any quay or other place for the purpose of being exported in contravention of an order made under the Act.' Informations/complaints were also preferred against the grocer for aiding and abetting the nightwatchman.

Section 3(1) states as follows –

“If any goods –

- (a) are imported or exported in contravention of an order under this Act, or
- (b) are brought to any quay or other place, or waterborne, for the purpose of being exported in contravention of an order under this Act

those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter of the goods or his agent shall be liable to a penalty of five hundred dollars.”

The magistrate dismissed the informations/complaints on the grounds that the words “or other place” in the section must be construed *ejusdem generis* with “quay”, and that the nightwatchman’s residence was not *ejusdem generis* with a quay.

The Director of Public Prosecutions/Attorney General wishes to appeal this decision which he is entitled to do. What advice would you give him? Give reasons.

---

### **QUESTION 6**

Mike Bloggs, a farmer, has been suffering losses of his goats over the last six months from attacks by roaming dogs.

One morning, in March of this year, his son Jerry saw a large Doberman pinscher dog on a section of the farm very near to the highway and about a half mile from where the goats were grazing. When the dog saw him it started moving towards the highway. Jerry nevertheless shot the dog because he was afraid it would harm the goats.

The dog in fact belonged to a neighbouring farmer, Tom Deer, who claimed that the dog was a very intelligent animal, a good house-dog and watch-dog and very useful around the farm. Further that Jerry knew the dog. He claimed that on the morning in question his wife took the dog onto the highway on its lead and

walked with it towards her aunt's house. She then allowed the dog to continue along the highway to meet him, as it often did in the morning. Apparently the dog then wandered onto Blogg's farm. The two farms are about one mile apart.

Deer initiated a civil action against Bloggs and Jerry to recover damages for the killing of the dog.

The magistrate held that the defendants were not liable. At common law, he stated, they would probably have been liable since the law was as follows:

"To kill, shoot or injure another man's dog without legal justification is an actionable wrong at common law. It is no legal justification that the dog was trespassing. In order to legally justify such an act it must be proved that it was done under necessity for the purpose of protecting the person or saving in peril at the moment of the act."

However, the Control of Dogs By-Law provides as follows:

"A By-Law for restraining and regulating the running at large of dogs; and for seizing, and impounding dogs running at large contrary to the By-laws; and for selling the dogs so impounded or any of them at such time or times and in such manner as may be directed by any By-law in that behalf.

1. For the purpose of the next succeeding paragraph a dog shall be deemed to be running at large when found in a street or other public place and not under the control of any person.
2. It shall not be lawful for any dog to run at large unaccompanied by its owner or by such member of such owner's family and any dog except hounds, found so running large a greater

distance then one half mile from the premises of its owner and unaccompanied therewith may be killed by any resident of this municipality.”

Deer seeks your advice as to whether he should appeal this decision.

What is your advice? Give reasons.

---

### **QUESTION 7**

Jeffrey Jones, a young attorney-at-law who was recently admitted to practice, was instructed by the senior partner in his firm to prepare a lease for a small commercial complex. He was further instructed to follow the terms of an existing lease. On reading the lease, he noted the following covenant with respect to repairing the premises –

“4. When where and so often as occasion shall require well and sufficiently to repair renew rebuild uphold support sustain 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 therefore) shafts stairways fences pavements forecourts drains sewers ducts flues conduits wires cables gutters soil 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 or payment of the policy moneys 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.”

Jones, however, was of the opinion that the covenant could be improved upon without changing the intent of the covenant. He therefore re-drafted it 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 cables,
- (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.”

Discuss whether or not Jones has successfully re-drafted the covenant.

## **QUESTION 8**

Your client David Nerd was convicted on July 15, 2005 of unlawfully and carnally knowing a girl named Shelly Brown on March 1, 2005 when she was fourteen years and eleven months old – contrary to section 5 of the Criminal Law Amendment Act 1998 as amended by section 7 of the Prevention of Cruelty to Children Act 2005.

Section 5 of the Criminal Law Amendment Act 1998 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.”

Section 7 of the Prevention of Cruelty to Children Act 2005, which came into effect on May 25, 2005, provides -

“The limit of time mentioned in the proviso to section 5 of the Criminal Law Amendment Act 1998 shall be six months after the commission of the offence.”

At the trial it was submitted by Tuck Priester (who was then attorney-at-law for Nerd) 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.”

Nerd now wishes to appeal.

Advise Nerd on the merits of an appeal.

---