

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2007

**LEGAL DRAFTING AND INTERPRETATION**

(THURSDAY, AUGUST 2, 2007)

**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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## QUESTION 1

Larry Loser, while driving his car home from work one night in July, collided with a car which was parked on a corner. Immediately after the collision he went to a nearby club where he drank a “double gin”. He then returned to his car with the intention of driving home. However, he discovered that his car could not be driven as one of the front tyres was flat and the left front fender was bent in hard against the left tyre. He therefore, decided to sit in the car until he could determine his next move.

Shortly, thereafter the police came on the scene, spoke with him and then carried out an alcoholic test on him which proved positive. He was then arrested. Subsequently, a laboratory test for which he provided a specimen showed that the proportion of alcohol in his blood exceeded the prescribed limit. In due course he was charged with two offences namely –

- (i) being in charge of a motor car when unfit to drive through alcohol contrary to section 6 of the Road Traffic Act; and
- (ii) being on the same occasion in charge of the same motor car when the proportion of alcohol in his blood exceeded the prescribed limit contrary to section 2 of the Road Safety Act.

Section 6 of the Road Traffic Act provided –

“6 (1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment.

(2) A person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he

proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drugs.

Section 2 of the Road Safety Act provides –

“2. (1) If a person drives or attempts to drive a motor vehicle on a road or other public place, having consumed alcohol in such a quantity that the proportion thereof in his blood, as ascertained from a laboratory test for which he subsequently provides a specimen which exceeds the prescribed limit at the time he provides the specimen, he shall be liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or both.

(2) Without prejudice to the foregoing subsection, if a person is in charge of a motor vehicle on a road or other public place having consumed alcohol as aforesaid, he shall be liable on summary conviction, to a fine not exceeding one thousand dollars or imprisonment for a term not exceeding four months or both.

(3) A person shall not be convicted under this section of being in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as there was any probability of his having alcohol in his blood in a proportion exceeding the prescribed limit.

(4) In determining for the purposes of the last foregoing subsection the likelihood of a person’s driving a motor vehicle when he is injured or the vehicle is damaged, the court shall disregard, the fact that he had been injured or the vehicle had been damaged.”

Loser was subsequently found guilty by the magistrate on both charges and fined one thousand dollars on each charge. Loser wishes to appeal this decision. As his attorney-at-law would you appeal it? Give reasons.

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## **QUESTION 2**

In its 2004 Report, the Criminal Law Reform Committee had in relation to jury service recognized and affirmed the rule of conduct that deliberations of jurors ought to be treated as private and confidential.

In recent years, however, the sacrosanctity of jury deliberations had been eroded by a number of publications that revealed jury room discussions.

Last year section 8 of the Contempt of Court Act was amended as follows:

**“Information  
from Jurors**

8. It is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any proceedings.”

In March this year, the Today Times, one of the daily newspapers, published an article containing certain statements and opinions by a juror concerning the verdict, in a sensational murder trial, that had been delivered by the jury on which that juror had sat.

The journalist had obtained the information not from the juror directly but from the transcripts of a researcher who had conducted interviews with jurors for research and educational purposes.

Contempt proceedings brought against the Today Times under section 8 of the Contempt of Court Act for publishing the information were successful. The Today Times now wishes to appeal.

They contend that the disclosure under section 8 must be in relation to information directly obtained from a juror and not an independent source.

Advise the Today Times as to the likelihood of a successful appeal.

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### **QUESTION 3**

Sylvia Sinclair, a university graduate, made her Will (without legal assistance) in December 1998. She appointed her sister Angella Hardacre, 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 –

- “(1) I GIVE AND BEQUEATH to my daughter Shelly-Ann who now resides in Canada the following:
- (a) the proceeds of life insurance policy number 2121 with Rock Life Insurance company Limited;
  - (b) Realty in property at Inverness subject to –
  - (c) payment of mortgage and interest thereon on the Bank of Halifax;
  - (d) payment until mature of the premiums payable on life insurance policy number 1374 with the British Life Insurance Company on the life of the above-named Shelly-Ann ;

- (2) To my mother Mary Florey –
  - (a) all my shares and other interest in the Town Co-op Credit Union Limited;
  - (b) all my shares and accruing interest in the Mutual Thrift Society Limited;
  - (c) Life interest in property at Inverness on the death of my mother the life interest hereby created shall revert absolutely to my daughter Shelly-Ann.
  
- (3) I HEREBY GIVE AND BEQUEATH to my father Jackson Martin and his wife Precious half proceeds from my Mutual Insurance Policy number 6000.
  
- (4) To my nephew Mark and Phillip Tough in equal portions the other half of the proceeds from Mutual Insurance Policy number 6000.

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

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

Sylvia died last year and her mother a retired nurse who was living in rented premises moved into the house at Inverness.

Last month, however, probate of the Will having been recently granted, Mrs. Hardacre the Executrix, told Mrs. Florey that she would have to vacate the house as she was about to sell it at the request of Shelly-Ann.

Mrs. Florey has sought your advice. Advise her giving reasons.

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#### **QUESTION 4**

The Road Traffic (Speed Devices) Regulations provides inter alia –

- “4. Any traffic authority may –
- (a) establish or cause to be established; or
  - (b) authorize the constables of the police force or any municipal police force to establish on any road under the jurisdiction or control of the traffic authority, such speed-timing devices as may be deemed by the Minister of Justice to be suitable for determining the speed at which motor vehicles on the road are travelling.
5. Where –
- (a) any person is charged with committing an offence under these Regulations by reason of driving a motor vehicle on a road at any time at a speed that, at that time and on that road, was unlawful under these Regulations;
  - (b) the speed at which the person was driving the motor vehicle, at the time and place charged, was determined by a speed-timing device, or by the oral evidence of the police officer operating the speed-timing device at the time the alleged offence was committed;
  - (c) evidence of that speed is tendered to the magistrate by way of the production of a recording made by the speed-timing device at the time the alleged offence was committed;

If the magistrate is satisfied that the speed-timing device is of a type that is accurate for the purposes for which it was designed and was in good working order at the time the recording was made, he may accept the recording or the testimony of the police officer as evidence without requiring expert evidence respecting the functions and operation of the speed-timing device or of its efficiency for the purpose of determining the speed at which motor vehicles are being driven on roads”.

Olga Slow, while driving her 1975 Toyota Corolla along Mountain Slope was flagged down by a police officer and accused of travelling at 80 k.p.h. in a 50 k.p.h. speed zone. Ms. Slow refuted this by claiming that she had never in all of fifty-two years of driving, exceeded the speed limit. Further she stated that because of the age of her car it was incapable of travelling at the speed the officer claimed she had been driving.

The police officer in reply said that in determining her speed he had used a very modern and accurate speed-timing device known as a “Reliable Radar Speedalyzer Detection Unit” and that, that device had recorded her speed at 80 k.p.h.

Accordingly, Ms. Slow was charged for exceeding the speed limit.

At the trial, Ms. Slow’s attorney-at-law submitted that the court was precluded from accepting in evidence the speed recorded by the speedalyzer as the provisions of Regulation 4 had not been complied with. This was so because the Minister of Justice had not considered the suitability or otherwise of the type of speedalyzer that had been used by the police officer.



The magistrate, however, rejected this submission on the basis that Regulation 5 gave him a discretion and that in exercising this discretion he was satisfied that Ms. Slow was guilty as charged.

Ms. Slow wishes to appeal this decision and has sought your opinion as to whether she ought to appeal.

What is your advice? Give reasons.

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### **QUESTION 5**

Art Publishers Limited, suppliers of books and stationery, had insured their stock-in-trade against fire and windstorm with Indies Insurance Company 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 agrees 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, 2005 and July 9, 2006, 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, 2005, the building in which Art Publishers Limited carried on business was destroyed by hurricane and its stock-in-trade also destroyed. Royal Commercial Bank sought to recover the sum due under the insurance policy but other creditors of Art Publishers Limited 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.

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### **QUESTION 6**

Lady Lowbrow was a foundation member and principal benefactor of the Citizen's Aid Bureau founded in 1950. The objects of the Bureau as set out in its memorandum objects are as follows –

- “(a) to provide advice, aid and services on or relating to medical, dental, optical, health, legal, matrimonial, domestic or other social matters;
- (b) to establish and operate a fund for the assistance of those in need on such terms and conditions as the Executive Committee may determine;
- (c) to make available to the individual in confidence, accurate information and skilled advice on personal problems of daily life;
- (d) to establish, organize, sponsor or otherwise promote adult education and technical training of every kind including the exploration of legislation and government notices and publications;
- (e) in general to advise the citizen on the many complexities which may beset him.”

Last year in filing her tax returns for the year 2005-06, Lady Lowbrow deducted the sum of \$100,000 from her taxable income being the sum she had donated to

the Bureau. She justified this on the ground that Section 8 of the Tax Act permitted this.

Section 8 provides as follows –

“Notwithstanding anything to the contrary in this Act where any person has directly or indirectly assigned or otherwise disposed of to any person otherwise than for valuable and sufficient consideration the right to income that would if the right thereto had not been so transferred be included in ascertaining his chargeable income for the year unless the income has been transferred, assigned or otherwise disposed of to or for the benefit of any ecclesiastical, charitable or educational institution, organization or endowment of a public character.”

The Commissioner of Inland Revenue has rejected Lady Lowbrow’s deduction on the ground that the Bureau did not fall within the provisions of Section 8 and that the definition of the word “charitable” was to be found in the preamble to 43. Eliz. 1 c 4 (1601). That preamble defines “charitable” as follows –

“The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning and free schools and scholars of universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance for houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.”

Lady Lowbrow has sought your advice as to whether she should pay the tax or appeal the Commissioner’s decision.

What is your advice? Give reasons.

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### **QUESTION 7**

Your client, Mr. Lou Shawls, has recently had a heart attack. As a result he is presently unable to manage his affairs. He owns two properties and a printery which he managed with the assistance of his clerk Sticky Fingers.

As a result of his incapacity Shawls asked Fingers whether he would manage the business and his properties. Fingers agreed, but told him that he, Shawls would have to give him legal authority in writing, to which Shawls agreed. Shawls 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, Lou Shawls of “The Cedars” St. Paul, Businessman, hereby appoint Sticky Fingers of “42 Apple Way” St. Thomas, Clerk, 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 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 three 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 10<sup>th</sup> day of June, 2007.”

In early July 2007, Shawls’ bank manager e-mailed him seeking his confirmation that Fingers was authorized to withdraw a large sum of money from Shawls’ account. Shawls told the manager that this was not the case. Shawls then tried to contact Fingers but was told that he was out of the jurisdiction for a few days. The following day Shawls received two telephone calls from a person who stated that he had recently contracted to purchase a property from Fingers but on investigating the title discovered that it was owned by Shawls.

Shawls, has now come to see you. He tells you that it was never his intention that Fingers would be able to operate his personal bank account or be able to sell his properties. What he had intended was for him to be able to do the day to day management of the printery business and manage the properties.

He therefore seeks your advice with respect to the Power of Attorney he executed.

Advise him. Give reasons.

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## **QUESTION 8**

In September 2005, Simon on behalf of Bart sold a lot of land to Mark. It had been orally agreed that Simon be paid a commission of three percent on the sale price of the land. In November 2006, Bart received from the purchaser the full purchase price and Simon therefore sought his commission.

In September 2006, however, the Frauds Act was amended by the addition of a new section designated section 9. As a result of that section Bart claimed that he was not legally bound to pay the commission, as the contract between himself and Simon was an oral one.

Section 9 states as follows:

“No action shall be brought to charge any person for the payment of a commission or other remuneration for the sale of real property unless the agreement upon which such action shall be brought shall be in writing separate from the sale agreement and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.”

Simon, who is of the view that section 9 does not apply to his case, now seeks your advice.

What is your advice? Give reasons.

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