

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2012

LEGAL DRAFTING AND INTERPRETATION

(WEDNESDAY, AUGUST 8, 2012)

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.
- (e) Answers should be written black or dark blue ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Under section 3 of the Tourist Areas (Protection) Act (“TAPA”), it is an offence for a person to “solicit in a street” for purposes of prostitution.

Sun Jam is an emerging tourist town in your jurisdiction which is attracting a growing number of affluent visitors from the USA. Vera Maple, a prostitute, wanted to take advantage of this opportunity, and rented premises near to the routes tourists were expected to take while vacationing in Sun Jam. Over several days recently, Maple positioned herself at the front window of these premises, seductively dressed, and signalled to male tourists passing by in the street outside, in a manner which could only be interpreted as solicitation for purposes of prostitution.

Maple was charged under section 3 of TAPA. In court, Maple’s counsel has raised the defence that while his client was soliciting at the material times, she could not be guilty of an offence under section 3, since Maple was never physically in the street itself as required by the provision; the solicitation was carried out from inside the premises.

You represent the Director of Public Prosecutions/Attorney General in this matter. The judge, in adjourning court for the day, requested that you respond on resumption to the “formidable” argument of defence counsel.

In your overnight research, you become aware of the Report of the Stanley Task Force on “Combating Crime in Tourist Areas”, whose recommendations prompted the passage of TAPA. This Report highlighted the growing scourge of prostitution in tourist resorts, and urged the introduction of “a strong legislative remedy to eradicate this mischief.”

Court has now resumed, and the judge invites you to respond on behalf of the Crown.

Present your response to the court.

## **QUESTION 2**

In the 19<sup>th</sup> century, a conspicuous minority group known as “the Chosees” was subjected to intense persecution in India. Many of them opted to leave their native country, joining the thousands of Indians who travelled to the Caribbean at that time to work as indentured labourers. Fiercely clannish, the Chosees over time maintained their distinctive dialect, dress, religious practices and other cultural expressions in just the same way as when the group flourished in India.

Sunil Tami, a Chosee, is an architect in your jurisdiction. Earlier this year, he submitted a bid in response to an advertisement calling for tenders to provide architectural services in relation to a significant project. Tami was subsequently shortlisted for the work, and invited to an interview to provide further particulars of his bid. He attended the interview in attire which clearly identified him as a member of the Chosees.

The Chairman of the interview had developed a distinctly unfavourable impression of Chosees since his early childhood. He was rude to Tami during the interview, and did not allow him to complete his presentation. Tami’s bid was ultimately rejected.

Convinced that he is the victim of illegal discrimination, Tami consults your law firm for advice, and has been referred to you. You are aware of provisions of the Contracts Tendering Act (“the CTA”) which prohibit discrimination in the contract awards process on grounds of “ethnic origins”.

Carefully consider Tami’s situation, and advise him, based on relevant case law, whether a valid claim of violation of the CTA can be established.

### QUESTION 3

Mia Stow, 25, enjoys an active social life. While returning home late one night after a visit to a nightclub, Stow had the sense that she was being followed. She quickened her pace and arrived home safely. The following week, after a similar club visit, she returned home to find a note on her door, which read:

*“I KNOW WHAT YOU DID LAST WEEK.”*

Frightened, Stow immediately remembered the internationally popular horror film (with a title similar to the note), in which several young people were terrorised by a man seeking revenge. She ran into the house and locked all windows and doors securely. The next day she changed all the locks on the doors.

Two days later, while at home, Stow answered a telephone call, but only heard heavy breathing coming from the other end of the line. Alarmed, Stow promptly replaced the telephone receiver. This experience was repeated over the next few days, causing Stow great distress. Eventually, Stow was forced to consult a psychiatrist, who diagnosed severe anxiety disorder, and prescribed medication.

A man was recently taken into custody for stalking and harassing a number of women, including Stow. All the victims have suffered psychiatric injury similar to Stow’s as a result of the harassment.

The suspect has now been charged on multiple counts of assault under section 15 of the Assaults (Punishment) Act 1872 (“the APA”), which makes it an offence for anyone to commit an assault “occasioning actual bodily harm”.

At the trial recently, lead counsel for the Director of Public Prosecutions/Attorney General presented the case for the Crown. In response, defence counsel has conceded that the actions of his client constitute an assault in law, but argues that no offence has been committed under section 15, since:

- all the complainants have only suffered psychiatric injury, not “bodily harm” as required;
- in the 19<sup>th</sup> century, the reference to “bodily harm” could only have meant physical injury; the legislature would not have contemplated psychiatric harm when enacting the APA, since the field of psychiatry was not well developed at the time;

- the courts today should only give effect to Parliament’s intention, as gathered from circumstances known to exist in 1872, rather than strain the language of the APA to accommodate the latest scientific understanding of the relationship between mental and physical injury.

You are a member of the prosecution team. Respond to the arguments of defence counsel, referring, *inter alia*, to the celebrated dictum of Lord Wilberforce in Royal College of Nursing of UK v Department of Health and Social Security [1981] 1 All E R 545.

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#### **QUESTION 4**

The Defence Force in your jurisdiction maintains a number of military bases. One of them (“the Guard”) is located in a secluded rural area, and is surrounded by high perimeter fencing.

Al Yeen is a radical journalist who has come to the view that the power structures of the country are alienated from the concerns of the average citizen. Amid rumours that the Defence Force has a rogue unit at the Guard carrying out tough interrogation techniques on certain criminal suspects, Yeen decided to personally investigate.

Last month, he breached the perimeter fencing of the Guard and entered the compound. While peering through the window of a building, he was accosted by a soldier and taken into custody. Yeen has now been charged under section 7 of the Defence (Military Installations) Act (“the DMIA”), which makes it an offence for any unauthorised person to be found “in the environs of a military base”. Yeen is an unauthorised person.

The general object of the DMIA is to provide a protective framework for the conduct of operations at military installations, in keeping with national security interests.

At the trial, the prosecution contends that:

- having regard to the object of the DMIA, a generous interpretation should be given to section 7, so that unauthorised persons found either within, or in the vicinity of, military bases should be liable;
- to read the section too narrowly would lead to absurdity, which must be avoided in line with the golden rule enunciated by Lord Wensleydale in Grey v Pearson (1857) 6 HL Cas 61, 106;
- Adler v George [1964] 2 QB 7 supports the argument that a narrow literal interpretation can be set aside, where to implement it would defeat the object of the statute.

For his part, counsel for Yeen argues that:

- section 7 is to be read in its strict literal sense, in keeping with the approach to statutory interpretation adopted by Tindal C.J. in the Sussex Peerage Case (1844) 11 Cl & Fin 85, 143, so that only unauthorised persons found in the environs of the base can be subject to liability;
- the dictionary meaning of “environs” is “surrounding area”, and since Yeen was found inside the base itself, not in the area surrounding it, he had not committed an offence under section 7.

You are the judge considering these submissions. Critically assess them and advise of your ruling.

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## **QUESTION 5**

Under the Youth Protection Act (“the YPA”), the office of Youth Advocate is established to represent minors between the ages of 12 and 17, who are brought before a court or other tribunal on the basis that they are in need of care and protection.

Section 25 of the YPA sets out four criteria for appointment to the office of Youth Advocate. The first requirement is that applicants must be qualified by experience in “law, medicine, psychology, education or some other professional discipline”.

Fay Dart responds to an advertisement inviting applications for the post of Youth Advocate under the YPA. Dart is a physiotherapist who has over the years developed particular expertise in treating sports injuries incurred by secondary school children performing at track and field events.

Dart's application for the advertised post was promptly rejected. In a letter, the selection committee indicated that she had failed the first requirement, in that she neither qualified on the basis of the specific disciplines prescribed under section 25, nor the wider "some other professional discipline" phrase. In the committee's opinion, physiotherapy, while a professional discipline, was not in the same category suggested by the specific vocations set out in the provision.

Dissatisfied with this explanation, Dart consults you for advice.

Advise Dart whether there are arguable grounds on which to challenge the committee's decision.

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## **QUESTION 6**

Under section 38 of the Dangerous Weapons Act ("the DWA"), it is an offence for a person to "manufacture, import, sell, offer for sale, hire or give to another person" any weapon falling within a prescribed list.

Hugh Li operates a variety store in an inner-city shopping plaza, and has recently received for sale, several knives from a friend who secretly brought into the jurisdiction a larger quantity of the product originating from the USA. Li attached price tags to his knives and displayed them in his store window to attract customers. The knives fall within the prescribed list of weapons under the DWA.

While on patrol in the area, Constable Goode saw the knives exhibited in the window, and took Li into custody. Li has been charged with offering the knives for sale contrary to section 38 of the DWA.

You represent the Director of Public Prosecutions/Attorney General in this matter. You are aware that the decision in Fisher v Bell [1961] 1 QB 394 is not helpful to the prosecution, and turn to consult the Hansard debate on the DWA. This research discloses that the Minister for Security Affairs, in piloting the Bill in Parliament, had referred to:

- the frightening proliferation of specified knives and other weapons in schools throughout the country;
- the urgent need to cut off the supply of such weapons, from whatever source, so as to protect the nation's youth.

Armed with this information, you attend court and have been called on by the trial judge to lead the prosecution case.

Present the arguments on behalf of the Crown.

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## **QUESTION 7**

Under section 50 of the Succession to Property (Testators) Act ("the SPTA"), a testator's will shall be revoked by "burning, tearing, mutilating or defacing".

The Long Title to the SPTA reads:

*"AN ACT to provide for the proper execution and construction of wills; to define the actions, whether partial or completed, which will revoke a will; and for connected purposes."*

Some years ago, 70-year old Ava Raid made her will under which she gave her entire estate to her son, Jay. However, the relationship between mother and son deteriorated significantly during 2011. In October, 2011, after a quarrel over the telephone with Jay, Ava retrieved her will from a drawer and proceeded to tear it down the middle. When she had torn about one-third of the document, she stopped, having second thoughts about the severity of her actions. Regretful, Ava then replaced the will in the drawer.



Ava died earlier this year without having made another will.

The executor under the will has now approached you for advice on the validity of the partially torn document, which he found among Ava's possessions. It is still possible to clearly discern the provisions of the document, despite the tear.

Advise the executor, making sure to include in your opinion reference to the implications of the Latin maxim *noscitur a sociis*.

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### **QUESTION 8**

Phil Core, a para-legal secretary, has mortgaged his apartment to Homes Building Society ("HBS"). The mortgage contract contains the following provisions:

*"15. In the event any mortgage payment is overdue for more than 30 days, the failure of the mortgage company to thereafter serve a notice on the mortgagor demanding payment of the outstanding sum, shall not in any way prejudice the right of the company to take the relevant legal action to recover the sum owing.*

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*30. Where any mortgage payment is overdue for more than 30 days, the mortgage company shall not exercise any of its legal rights to recover the sum owing unless it has first served a notice on the mortgagor demanding payment of the outstanding sum."*

Core has been in arrears on his mortgage payments for more than 90 days. On June 20, 2012, HBS opted to take legal action to recover the arrears, although no demand notice had been previously served by the company on Core.

Core reviewed the mortgage contract and now recognises that Clauses 15 and 30 are totally irreconcilable. He recalls from his para-legal studies the existence of a rule of law to the effect that, in such cases of inconsistency, the later provision takes precedence over the earlier one.

Core finds this comforting: it would mean that HBS's legal action against him is misconceived, since the precondition of a demand notice under Clause 30 was not met. However, to verify this position, Core now consults you for advice.

Advise Core on the validity of the legal principle on which he relies, referencing ONLY the following cases: Re Marr (Bankrupt) (1990); Institute of Patent Agents and Lockwood (1894); Owens Bank Ltd v Cauche (1989).

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**END OF PAPER**