COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2013

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, AUGUST 9, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Section 22 of the War Provisions Act 1895 ("the WPA") provides:

> "22. It is an offence for any national to accept an engagement to serve in the military or naval service of a foreign state which is at war with a friendly state."

There is no guidance in the WPA as to the intended meaning of the expression "military or naval service".

The WPA was enacted in the colonial era at a time of violent international conflict, and it was customary for strategic alliances to be forged among nations as a means of protection against attack. In the 1890's, the armed forces of a country consisted of its army (military service) and, where applicable, its naval service. There was no air force service at the time, as the technology for manned flights had not yet been developed.

In 2009, Guy Riks, a national of your jurisdiction, qualified as an airline pilot in Europe. While undergoing flight training there, he had become politically radicalised through his association with certain religious extremists. Last year, he accepted an engagement to be a fighter pilot in the air force of the Isle of Pimento ("IP"), a country engaged in a religious war with the neighbouring Republic of Spring Blossoms ("RSB"). Both states are in the Pacific region.

RSB is a friendly state within the terms of the WPA, but IP is not.

During the hostilities, Riks returned to your jurisdiction for a short break. Acting on intelligence, the police detained Riks and subsequently charged him for an offence under section 22 of the WPA.

The case has been passed to you and Ian Wit, counsel in the Office of the Director of Public Prosecutions/Attorney General. Wit has expressed to you his serious reservations about the strength of the prosecution's case, arguing that the IP air force is not a military or naval service. He supports this view by pointing out that:

(i) in arriving at the proper interpretation of section 22 of the WPA, a modern court is bound to give effect to what Parliamentarians would have contemplated at the time of debating the legislation in 1895;

(ii) accordingly, the court is likely to conclude that a restrictive interpretation should be given to the phrase "military or naval service" so as to exclude an air force service, which was non-existent at the time; and

(iii) the gap in the law can only be filled by Parliament taking action to amend the WPA so as to extend the phrase to incorporate an air force service.

Carefully assess your colleague's views, and give your reasoned opinion.

QUESTION 2

The Central Housing Board ("the CHB") is established under the Housing Improvement Act ("the HIA") as a public body with responsibility to administer a national mortgage scheme for the benefit of citizens in your jurisdiction.

One of the features of the scheme is that special mortgage concessions, elaborated in section 53 of the HIA, are only made available by the CHB to a "qualified applicant". Section 54 of the HIA states:

> "54. A person is a qualified applicant for the purposes of section 53 if he satisfies the conditions set out in section 60, and is employed full-time as a

soldier, police constable, prison warder, customs officer, immigration officer or other public functionary."

There is no definition of the phrase "public functionary" in the HIA, the Interpretation (or equivalent) Act or the Constitution. However, sections 50–60 of the HIA fall under the heading: "*Special Benefits for Law Enforcement Personnel".*

Hilda Pake is a full-time employee in the Office of the Public Accountant, which is an Office in the public service. Her job does not involve law enforcement duties.

Pake meets all the conditions set out in section 60 of the HIA, and has been told by a friend that she qualifies as a public functionary to take advantage of the special mortgage concessions regime under the statute.

Pake now consults you for legal advice on whether she has cogent grounds on which to apply to the CHB for the special mortgage concessions under the HIA.

Advise Pake.

QUESTION 3

The Customs Enforcement Act ("the CEA") was enacted to regulate the importation and exportation of goods. It is evident from several provisions of the CEA that one of its primary objects is to ensure the effective collection of revenue due to the Government. Under the CEA, customs duties are imposed on a wide variety of imported goods, including computer products.

Al Waye operates a computer supplies store, and routinely imports a wide range of computer products for the business. The police recently received information that Waye has been importing several computer products without declaring them to the Department of Customs,

thereby evading customs duties, contrary to the CEA. Accordingly, Waye was placed under surveillance.

In April this year, Waye received a consignment of computer products from overseas suppliers, which he collected at the airport after clearing Customs. The products were placed in two vans, and Waye travelled in one of them. While the vehicles were proceeding through the city centre, a policeman signalled the driver of the van in front to stop. The driver complied.

However, the second van carrying Waye and two employees sped away, and the police gave chase. Eventually, the second van was forced to stop some kilometers away, and Waye and the employees were detained.

After searching both vehicles, the police found that the first van contained some top-of-the-line computer products on which no customs duties had been paid; however, full duties had been paid on the products in the second van in which Waye had been travelling.

The police charged each occupant of the vehicles with the offence of being found in possession of uncustomed goods, contrary to section 10 of the CEA.

The relevant provisions of the CEA read as follows:

> "2. In this Act, unless the context otherwise requires –
>
> …..
>
> "uncustomed goods" means goods liable to customs duty on which the full duties due have not been paid or which are in any way dealt with contrary to this Act.
>
> …..
>
> 10. Any person found in possession of uncustomed goods is guilty of an offence
>
> and is liable on conviction to the penalties set out in section 34."

At Waye's trial, the prosecution argues that Waye has contravened section 10 of the CEA even though no uncustomed goods were discovered in the second van. They support this position by contending that:

(i) the phrase "found in possession" in section 10 is capable of bearing more than one meaning;

(ii) on a narrow interpretation, the phrase requires that the person be actually apprehended with the uncustomed goods in his possession;

(iii) on a wide interpretation, the phrase is apt to extend to a person being observed with the uncustomed goods in his possession, even if at the actual time of apprehension the goods are no longer in his custody;

(iv) the police had Waye under surveillance from the time of his entry into the airport, and he was observed at different points with the entire consignment of goods in his possession; and

(v) the wide interpretation is to be preferred, having regard to the object and purpose of the CEA viewed as a whole.

The prosecution tenders into evidence dictionary definitions of the word "found" to strengthen its arguments at (i) – (iii) above.

You are junior counsel representing Waye. Critically evaluate the Crown's arguments and write a note to Waye's senior counsel giving your opinion as to the strength of the defence case.

QUESTION 4

Nai Dan, who is from East Asia, settled in your jurisdiction several years ago and established a highly successful chain of health stores. Seeking to capitalise on the global obsession with

weight loss programmes, Dan introduced "Di Lo", a special brand of East Asian tea, into his stores for sale to the public.

Dan also advertised "Di Lo" on the radio and in newspapers, claiming that the tea had an excellent track record in reducing one's weight in a short period of time. Dan did not seek or obtain permission from any Government agency before selling and advertising "Di Lo".

The Ministry of Commerce launched an investigation into the marketing of "Di Lo", and ultimately Dan was charged for a violation of section 36 of the Consumer Products Act ("the CPA"). Section 36 of the CPA provides:

> "36. A person who advertises, distributes or sells any food, without first obtaining authorisation from the Ministry of Commerce, commits an offence."

There is no definition of the word "food" under the CPA, but it is common ground that while "food", on a literal interpretation, can include drink, the product must have nutritional value. Tests conducted on a sample of "Di Lo" have revealed that it is essentially a stimulant with no nutritional value.

The CPA was influenced by the Report of the Task Force on Consumer Affairs Law Reform, a Government-appointed body.

At Dan's trial, the prosecution:

(i) conceded that "Di Lo" did not constitute "food" in the ordinary dictionary sense, since it lacked nutritional properties;

(ii) contended, however, that for the purposes of the CPA, "food" should be given an extended meaning so as to cover "Di Lo", in light of the Report of the Task Force on Consumer Affairs Law Reform; and

(iii) sought the court's leave to admit the Task Force's report into evidence, to establish that body's concern about the mischief associated with the unregulated marketing of consumer products, both with and without nutritional value.

You are Dan's defence counsel. Detail your response to the prosecution's arguments.

QUESTION 5

The Employment (Anti-Discrimination) Act ("the EAA") was enacted in response to insistent calls from the public for fairness in employment arrangements, particularly for women, foreign workers and other traditionally vulnerable groups. The concept of equality of treatment runs throughout the EAA. In particular, employers are required to ensure that employees performing equal work are given equal pay.

Section 47 of the EAA states:

> "47(1) An employer shall pay the same salary to employees involved in like work.
>
> (2) For the purposes of subsection (1), two employees shall be deemed to be involved in like work where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, effort or responsibility."

Ann Lary is employed to Plastics X ("PX"), a business engaged in the production of plastic products, and works in a department of the business mainly staffed by female employees. Earlier this year, she was shocked to learn that her male counterparts in the department were being paid a higher salary than she was earning, especially since her job carried more responsibilities than theirs.

Lary complained to the management, claiming that the disparity in pay infringed the provisions of the EAA. PX was unmoved, refusing to make any salary adjustments. Upset, Lary has made a claim against PX for breaching its obligation under section 47 of the EAA.

In court, counsel for PX argued that his client had not infringed section 47 of the EAA. He contended that, on a literal construction of section 47, Lary and the male counterparts were not involved in "like work". Pointing to the definition given in section 47(2), counsel noted that "like work" had to be "equal in value", as described in the subsection; since Lary's job carried more responsibility than that of her male counterparts, the two sets of work could not be said to be "equal in value".

You are junior counsel representing Lary. During a court recess, Lary's lead counsel sends you the following note:

> "The argument of PX's counsel is overly literal and absurd. It means an employer who wishes to discriminate against women can always give them additional responsibilities, pay them less than males, and when confronted can simply assert that the work is not of equal value.
>
> This would defeat Parliament's intention behind the legislation. I believe this is a strong case for applying the golden rule of interpretation.
>
> Write me an opinion on the merits of taking this approach."

Prepare the opinion.

QUESTION 6

Under the Defamation (Punishment) Act 1968 ("the DPA"), suits for defamation of character are required to be brought within two years of the alleged defamatory act.

In January 2011, News Heights Limited ("NHL"), the owner of a daily newspaper in your jurisdiction, published an article in its newspaper which questioned the integrity of Hal Loe, a politician from a minority party. Loe publicly dismissed the allegations and threatened to sue NHL for defamation. However, Loe became distracted by political struggles within his own party, and to date no suit has been brought by him against NHL.

In March 2013, the legislature enacted the Limitation Act, which is now in force. The Limitation Act has made comprehensive amendments to the existing law on limitation of actions. Among the changes effected is the amendment of the DPA to delete the reference to two years and substitute four years as the limitation period in respect of defamation actions.

In light of this development, Loe wishes to proceed against NHL without further delay, but is uncertain as to the effect of the legislative amendment. He now consults you for advice.

Advise Loe as to the legal implications of the Limitation Act for his claim against NHL.

QUESTION 7

A decade ago, there had been an upsurge in cases of intimidating behaviour by gangs of youth, who would descend on town centres, create disorder and provoke fear among business operators and the general public. Consequently, the Public Order (Regulation) Act ("the PORA") was passed to address this development.

Section 11 of the PORA is in these terms:

> "11(1) Where a constable has reasonable grounds to believe that any members of the public are likely to be intimidated or harassed in a public place by a group of two or more persons who appear to be under the age of sixteen years, he may take one or more of the steps set out in subsection (2).

(2) The constable may:

(a) give a direction requiring any person in the group to immediately disperse; and

(b) take any person in the group to that person's place of residence."

Fourteen-year old Kye Mann is a member of a group of high school students who periodically miss classes to "hang out" in the downtown area. On occasion, they have become boisterous and created a public disturbance.

Last month, Constable True received information from a downtown store owner that a group of four boys was creating a commotion just outside his store. True arrived on the scene, quickly assessed the situation and:

- directed three of the boys to immediately disperse; and
- informed the fourth boy, Mann, who appeared to be the youngest, that he was taking him to his (Mann's) home.

The three boys dispersed as directed. However, Mann refused to accompany True, who then used reasonable force to take him home. Mann's father, Mell, objected to the manner in which his son had been treated, which in his view amounted to an infringement of the teen's civil rights.

Mell has now brought an action on Kye's behalf against the Attorney General and True arising from the latter's conduct. Mell is arguing that a constable's power to "take" a group member to his residence under section 11(2)(b) of the PORA is permissive, not coercive, since the legislation makes no mention of the use of reasonable force; accordingly, True could only have escorted Kye home if the teen had been cooperative.

The file has been passed to you as counsel in the Attorney General's Office. Your research reveals the following:

(i) there is no clear indication from the PORA as to whether the word "take" is intended to empower the constable to use reasonable force in escorting a young person home; and

(ii) the Hansard records on the PORA indicate that when introducing the Bill in Parliament, the Minister for Public Security had repeatedly referred to the critical power of constables to "remove" anti-social youth to their homes to ensure the overriding objective of preserving law and order.

On the basis of this information, write an opinion critically assessing the merits of Mell's arguments.

QUESTION 8

Phil Bahr, who is middle-aged, has taken out a health insurance policy with Be Sure Limited ("BSL"). One of the special features of this policy is that if Bahr is injured in an accident in which "connected persons" are also harmed, these persons will have a portion of specified medical expenses covered by BSL in certain circumstances.

Paragraphs 17 and 18 of the insurance contract provide:

> "17. Where the connected person is a member of the insured's family, that person shall be entitled to have fifty per cent of the costs of hospitalisation directly resulting from the accident covered by the insurer.
>
> 18. Where the connected person is a person for whom the insured would ordinarily be expected to provide, that person shall be entitled to have twenty per cent of the costs of hospitalisation directly resulting from the accident covered by the insurer."

There are no other provisions of the contract giving further guidance on the meaning of the term “connected person”.

In March 2013, Bahr decided to renovate his two-storey home with the assistance of some relatives, including his 19-year old cousin, Kason Ness. While Ness was atop a ladder which was leaning against the outside of the house, he lost his balance and fell to the ground. Ness seriously injured himself, as well as Bahr, who had been positioned at the base of the ladder. Both Bahr and Ness were admitted to hospital.

At the time of the accident, Bahr had been providing partial financial support to Ness.

Ness is seeking to have BSL cover fifty per cent of the hospital bill, in accordance with paragraph 17 of the contract, on the basis that he is a member of Bahr’s family. However, BSL’s Claims Manager takes the preliminary view that, in the circumstances, Ness more properly falls within paragraph 18 of the contract, and is only entitled to twenty per cent hospital support from BSL.

The matter has now been referred to you as in-house counsel for BSL. Carefully consider the case, and advise the Claims Manager as to the liability of BSL in the circumstances.

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END OF PAPER