

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2014

LEGAL DRAFTING AND INTERPRETATION

(AUGUST 14, 2014)

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 in black or dark blue ink.

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 provides –

“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 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 has come to see you for your advice as to whether he should defend the charges or plead guilty.

Advise Loser. Give reasons.

QUESTION 2

In its 2012 Report, The Criminal Law Reform Committee had, in relation to jury service, recognised 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 to read as follows:

“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 June 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 have been brought against the Today Times under section 8 of the Contempt of Court Act for publishing the information.

The Today Times contends that disclosure under section 8 must be in relation to information directly obtained from a juror and not an independent source. They have therefore sought your advice as to whether they should defend the proceedings or not.

Advise the Today Times.

QUESTION 3

On July 15, 2013, premises used as a grocery shop at 59 Bay Street were raided by the police and Micky and others were caught while engaged in illegal gambling activities. The police also found paraphernalia associated with illegal casino gambling.

In 2011 the shop was leased to Ringo for five years, but in 2012 he left for Toronto, Canada, and up to the time of the raid had not returned. In the meantime, Ringo had left Micky in charge of the premises and as manager of his business. Sometimes Micky slept there.

Micky was charged under an information/complaint under the Gambling Act, to wit –

“Under section 3 (a) as being the occupier of a certain shop did unlawfully use it as a common gaming house”.

The relevant provisions of the Gambling Act state as follows-

' 1. In this Part of this Law –

“Common gaming house” includes any place kept or used for gambling, to which the public, or any class of the public, has or may have access, and any place kept for habitual gambling, whether the public, or any class of the public, has or may have access thereto or not, and any place kept or used for the purpose of a public lottery;

“Unlawful gaming” includes –

The act of betting or of playing a game for a stake when practised –

(a) in or upon any path, street, road or place to which the public have access, whether as of right or not; or

(b) in or at a common gaming house as defined under the Law.

A place shall be deemed to be “used” for a purpose, if it is used for that purpose even on one occasion only;

“Gambling” means to play at any game, whether of skill or chance, for money or money’s worth.

2. Every common gaming house is hereby declared to be a common and public nuisance contrary to law.

3. Whoever –

(a) being the owner or occupier, keeps or uses a place as a common gaming house; or

- (b) *permits a place of which he has the use temporarily or otherwise, to be kept or used by another person as a common gaming house; or*
- (c) *has the care or management of, or in any manner assists in the management of a place kept or used as a common gaming house, or assists in carrying on a public lottery; or*
- (d) *commits an act of unlawful gaming,*

shall on conviction thereof be liable either to a fine not exceeding two hundred dollars or to be imprisoned, with or without hard labour, for a period not exceeding twelve months.'

At the trial evidence was led by the Crown that Ringo had left Micky in charge of the premises and as manager of his business. Evidence was also led that Micky sometimes slept there. It was argued before the magistrate on behalf of the Crown, that Micky was an occupier within the meaning of the section charged, in that he was in control of the premises and further that he sometimes slept there.

In reply, counsel for Micky submitted that he was wrongly charged as he was not the occupier of the place within the meaning of section 3. He was merely the agent of one Ringo, who was the tenant of the premises in question. His client only managed the business and therefore he could not be said to be the occupier of the premises under section 3(a). To support his submission he cited R v Alfred Tai (1933) 1 JLR 59.

In R v Alfred Tai, the court held, that a person who has the control of the place even if not resident there is the occupier. One who is merely a manager and not the owner of a business is not the occupier of the premises.

The magistrate acquitted Micky and gave judgment in the following terms:

"In my opinion the term occupier must be construed with reference to the object of the particular Act in which it occurs and means the person who has control of the premises. I agree with the decision in R v Alfred Tai as to who is an occupier and hold that it would be manifestly absurd that the accused who was a mere employee should

be regarded as the occupier, in this case. And I am reminded of the decision of River Wear Commissioners v Adamson."

As Director of Public Prosecutions/Attorney General would you appeal this judgment (a procedure permitted by the jurisdiction)?

Give reasons for your decision.

QUESTION 4

Steven Richards is the executor of the estate of Matilda Leigh, deceased. He tells you that Matilda Leigh was the tenant of a ground floor apartment at No. 17 Kensington Place for four years, for which she paid a monthly rent of \$10,000. After her death, as executor, he also paid rent for a period of three months at the same rate. Six months ago, he received a notice addressed to Matilda Leigh from the Rent Board which stated that the correct rent payable on the apartment was \$7,500 per month.

Upon receipt of the notice, he wrote to the landlord, who admitted to the fact that excessive rent had been paid, but denied liability to repay the excess to him, on the ground that the personal right of the tenant died with her and did not pass to her personal representative.

In an action before a magistrate, the court found for the landlord, basing its decision on the provisions of section 4 of the Rent Restriction Act. The relevant statutory provisions before the court were section 4 of the Rent Restriction Act (enacted in 1948) and section 2 of the Law Reform (Miscellaneous Provisions) Act (enacted in 2010).

Section 4 of the Rent Restriction Act states –

"4. Where any sum has been paid on account for any rent, being a sum which is by virtue of this Act, irrecoverable by the landlord the sum so paid shall be recoverable from the landlord who received

the payment or his legal personal representative from the tenant, by whom it was paid, and any such sum, which under this Act is recoverable by a tenant from a landlord or repayable by a landlord to a tenant, may without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.”

Section 2 of the Law Reform (Miscellaneous Provisions) Act states –

“2. On the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claim for damages on the ground of adultery.”

Steven Richards wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

Corporal Sosmart tells you that on April 16, 2014, Tony Lovechat, an attorney-at-law, entered the guard room at the City Centre Police Station at about 6:30 p.m. and requested that Sosmart enter in the station diary a report in reference to a client of his who was detained at the station. Sosmart thereupon informed Lovechat that his report was not of a kind intended for the diary.

Lovechat then started to strike the counter with his fist and demanded in a loud voice that the report be entered. When Sosmart again refused to do so, Lovechat took the diary which was on the counter and made two circles against the time column while still demanding “at the top of his voice” that his report be entered. When he was requested to hand over the diary, he threw it down on the counter with a loud bang.

Lovechat was then arrested and charged with disorderly behaviour contrary to section 56 of the Summary Offences Act.

Section 56 provides as follows –

“56. Every person who in any police station is guilty of riotous, indecent or disorderly behaviour shall be liable to a fine of two thousand dollars or to imprisonment for two months”.

The magistrate before whom the matter was tried acquitted Lovechat, holding that his conduct did not in his opinion amount to disorderly behaviour, that he did not use obscene language and that there was no breach of the peace.

Sosmart wishes to appeal this judgment (a procedure permitted by the jurisdiction) and has sought your advice.

What is your advice? Give reasons.

QUESTION 6

Your client, Joe Easy, was charged on an information/complaint which stated as follows –

“On Monday, April 4, 2014 one Joe Easy of Dodge of the parish of St. David and within the jurisdiction of this court did unlawfully wander abroad and lodge in a certain shop, not having any visible means of subsistence and not giving a satisfactory account of himself and is deemed an idle and disorderly person contrary to s. 4(4) of the Vagrancy Act.”

Joe was not represented at the trial but pleaded not guilty to the charge. He was found guilty and sentenced to 30 days’ hard labour. He then indicated to the court that he wished to appeal the decision and to retain counsel.

He now comes to see you and seeks your advice. Section 4(4) of the Act provides as follows –

“4(4) It shall be an offence for a person to wander abroad and lodge in any piazza, out-house or shed, or in any deserted or unoccupied building, or in any mill, sugar or other works, watch house, trash house or other building or within any field, pasture or enclosure, not having any visible means of subsistence, and not giving a satisfactory account of himself.”

What is your advice? Give reasons.

QUESTION 7

In a standard form Hire Purchase Agreement used by Simple Sales, a client of your firm, written warranty is defined as follows:

“In this agreement, ‘written warranty’ means any written affirmation of facts made and/or promise

made in connection with the sale of a product by the Seller to a Buyer which relates to the nature of the material or workmanship and affirms or promises that such aforesaid material or workmanship is defect free or will meet a specified level of performance over a specified period of time. Provided also that 'written warranty' shall mean any undertaking in writing in connection with the sale by a Vendor of a product to refund, repair, replace a product or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the aforesaid undertaking."

Tom Jones, an associate in your firm and a recent law school graduate redrafted that provision as follows:

"The term written warranty means –

(1) any written affirmation of fact or written promise which is

(a) made in connection with the sale of a product by the Seller to a Buyer;

(b) relates to the nature of the material or workmanship; and

(c) affirms or promises that the material or workmanship

(i) is defect free; or

(ii) will meet a specified level of performance over a specified period of time; or

(2) any written undertaking made in connection with the sale of a product by the Vendor to

(a) refund;

- (b) *repair; or*
- (c) *take other remedial action with respect to such product, if the product fails to meet the specifications set out therein.”*

- (i) Comment on the adequacy or otherwise of the redraft.
- (ii) Identify any ambiguity that arises in the provision as originally drafted.

QUESTION 8

John Jones died on March 15, 2012, intestate. Surviving him was his widow, Ester, a son, Marc, aged 6 and a daughter Anne, aged 14, whom the couple adopted on December 10, 2002, pursuant to an adoption order of the court. John and Ester were married on June 20, 2000. Neither was previously married.

On July 1, 2012, letters of administration in the estate of John were granted to Ester. At the time of Anne’s adoption, Section 15 of the Adoption Act read as follows:

“15. An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adoption.”

However, with effect from July 1, 2014, section 15 was repealed and replaced by the following:

“15. (1) For all purposes, as from the date of the making of an adoption order –

- (a) *the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and*
- (b) *the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted child, as if the adopted child had been born in lawful wedlock to the adopting parent.*
- (2) *The relationship one to another of all persons whether the adopted child, the adopting parent, the kindred of the adopted parent, the parent before the adopting order was made, the kindred of the former parent or any other person, shall for all purposes, be determined in accordance with subsection (1)."*

Under the relevant law governing the distribution of an intestate's estate, one-third of the estate of a deceased person passes to his surviving spouse, and the remaining two-thirds in equal shares to his children who survive him.

Advise John's personal representative, Ester, as to how the estate should be distributed.

END OF PAPER