

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2019

LEGAL DRAFTING AND INTERPRETATION

(AUGUST , 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school **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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

The Premium Housing Committee (“the PHC”) was established under the Housing (Development) Act (“the HDA”) as a public body with the primary responsibility of administering 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 40 of the HDA, are only made available by the PHC to a “qualified applicant”.

Section 58 of the HDA states:

“58. A person is a qualified applicant for the purposes of section 40 if he or she satisfies the conditions set out in the Schedule to this Act, 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 HDA, the Interpretation (or equivalent) Act or the Constitution.

However, the Long Title to the HDA reads:

“AN ACT to establish a public body to be called the Premium Housing Committee with power to advise the Minister on the housing needs of vulnerable citizens, to administer a national mortgage scheme, with particular focus on providing special benefits for law enforcement personnel, and for connected matters.”

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

Hike meets all the conditions set out in the Schedule to the HDA, but has been told by a friend that she may not qualify as a “public functionary” under the statute to take advantage of the special mortgage concession regime.

Uncertain of her position, Hike now consults you for legal advice on whether she has cogent grounds on which to apply to the PHC for the special mortgage concessions under the HDA.

Advise Hike, giving reasons.

QUESTION 2

Kids Unlimited (“KU”) is a privately-owned business which provides children’s entertainment services for profit. KU secured a licence from the local authority/municipal corporation (“the Corporation”) in your jurisdiction to stage a children’s concert on March 25, 2019 at Crown Park, which is controlled by the Corporation.

KU had contracted with Jules Vegg, a freelance actor, to perform as a clown at Crown Park on March 25. On that day, Vegg wore a costume and applied a heavy layer of make-up to his face. At 6 pm, during a 20-minute break in his presentation, Vegg seized the opportunity to buy accessories for his cellular phone at a store located within five minutes’ walking distance from Crown Park. He did not change his costume or remove the make-up, since he was due to continue his performance on his return to the park.

Vegg did not consult with anyone on his decision to leave the park.

At 6:15 pm, while walking back to Crown Park, Vegg crossed Agile Street, on which a variety of retail stores are located. A supervisor of the Corporation observed Vegg as he crossed the street, and told him that his conduct violated KU’s licence and would be reported. Despite Vegg’s desperate attempts to explain the situation, the supervisor refused to listen and walked away.

A report on the incident has now been made. As a legal officer employed to the Corporation, the matter has been referred to you.

Relevant extracts from KU's licence appear below:

"...2. In this licence –

...

"public place" includes any public highway, street or road;

...

5. You (KU) are granted a licence to use Crown Park on March 25, 2019 for the purposes set out herein, between the hours of 10 am and 8 pm (hereafter "the contracted hours").

...

14.1 You agree to be fully responsible for the wrongful acts and omissions of any employee, agent or contractor whom you engage to fulfil the purposes herein.

14.2 It is mutually agreed that any employee, agent or contractor of KU may wear masks, or be otherwise disguised while he or she is performing at, or is otherwise within the boundaries of Crown Park during the contracted hours.

14.3 No employee, agent or contractor of KU may wear masks or other disguise during the contracted hours while he or she is in a public place outside the boundaries of Crown Park, unless that person has obtained permission from the Corporation or has a reasonable excuse.

The expression "reasonable excuse" is not defined in the licence, but you are aware of case law which indicates that courts in similar circumstances have tended to give a generous interpretation to the expression.

The Corporation is now seeking your advice on whether KU has breached the terms of its licence. Advise the Corporation, giving reasons.

QUESTION 3

Under the Drug Testing (Sports) Act (“the DTSA”), all athletes participating in competitive sports are required to submit urine samples to the Anti-Doping Agency (“the ADA”) for purposes of drug testing.

The ADA was established under the DTSA with the general mandate to take measures to deter and detect the use of illicit performance-enhancing drugs in sport. Under the statutory scheme, once athletes submit samples to the ADA, they are to be sent to certain accredited laboratories for purposes of drug testing. All accredited laboratories are located overseas.

Section 15 of the DTSA is in these terms:

“15. On receipt of the “A” and “B” samples from an athlete, the Anti-Doping Agency shall, as soon as practicable, send both samples to an accredited drug laboratory for drug testing.”

The DTSA provides no indication of the intended meaning of the word “send”, as used in section 15.

Jana Chok is a promising track and field athlete who submitted A and B samples to the ADA in 2018. The ADA sent off the samples in reasonable time to Speedie One Limited (“SOL”), a courier business, for delivery to an accredited drug laboratory in the United States of America. At the time of delivery of the samples to SOL, it was public knowledge that the courier’s employees were restive, having threatened industrial action.

The employees went on strike, and ultimately Chok’s samples were delivered to the drug laboratory months behind schedule. The drug-testing results revealed that both Chok’s A and B samples contained a banned performance-enhancing drug.

The ADA summoned Chok to a hearing on the test results. At the hearing, she challenged the findings, claiming that the inordinate delay in the delivery of her samples by SOL cast serious

doubt on the integrity of the laboratory's results. Further, Chok blamed the ADA for utilising SOL as the courier, at a time of known industrial instability.

You are the sole attorney-at-law on the panel hearing Chok's case. Your research reveals the following:

- (i) the leading dictionaries indicate that the word "send", used in section 15 of the DTSA, has more than one ordinary meaning;
- (ii) on one construction, the word signifies simply 'to cause to leave a particular place', that is, 'to send on its way', and does not extend to receipt at the ultimate destination;
- (iii) alternatively, the word signifies not merely 'to cause to leave a particular place', but rather 'to deliver to its ultimate destination';
- (iv) the DTSA was heavily influenced by the Report of the Task Force on Sports Doping, which was set up in response to the international scandals involving drug cheating in sports; and
- (v) the Report of the Task Force on Sports Doping emphasised that to effectively combat the mischief of drug misuse, the supervisory drug agency had a duty, in the interest of fairness, to ensure the integrity, and timely delivery to destination, of drug samples submitted for testing.

Write an opinion assessing the application of section 15 of the DTSA to the facts of Chok's case.

QUESTION 4

Following an upsurge in crimes involving knives in several parts of your jurisdiction, the Knives (Control) Act (the "KCA") was introduced. The KCA seeks to regulate the possession of certain knives in public places. Section 22 of the KCA states:

"22. A person shall not knowingly have a dangerous knife in his possession in any public place."

The term “dangerous knife” is defined in the KCA to include a “common folding knife”, but there is no clarification in the statute of the intended meaning of “common folding knife”. In fact, there are different interpretations of the exact nature of folding knives: some persons believe that such knives may only be folded or unfolded through pure manual application by the user; others believe that the action of folding or unfolding has to be triggered by pressing a button, which activates a spring to conceal or reveal the bladed portion.

In the latter case, the knife becomes particularly dangerous because the blade can be activated in an instant to inflict serious injury.

On February 2, 2019, Keith Nye sauntered through the Grace Public Market in a rural district. As was his custom, he intentionally carried in his pants pocket, as a weapon of defence, a folding knife whose blade could only be revealed or recessed by manual manipulation.

Constable Keen was on duty that day and, noting a suspicious bulge in Nye’s left pants pocket, searched him. The knife was seized and Nye taken into custody. Nye has now been charged for knowingly possessing a dangerous knife, namely, a common folding knife, in a public place (the market), contrary to section 22 of the KCA.

Nye has sought your advice on his prospects of resisting the charge at trial. In response, you research the background to the KCA and discover the following:

- (1) The Knives (Control) Bill generated heated debate in its passage through Parliament.
- (2) While piloting the Bill, the Parliamentary Secretary (“the PS”), deputising for the Minister of National Security, who was ill, spoke passionately about the need for resolute action on the matter of knife regulation.
- (3) In response to a question on the types of knives to be prohibited, the PS was recorded as stating, “Let me tell you, all these weapons will be banned in public - daggers, common folding knives and the like. They are too dangerous to be let loose on our citizens.”

In light of all the facts, write an opinion setting out your assessment of the merits of Nye's defence. (You are to assume that the prosecution can establish the element of "knowing" possession.)

QUESTION 5

Western Football Club ("WFC"), a football club in the Premium League in your jurisdiction, is experiencing a period of great success. WFC's management is planning to recruit a number of new players, and consequently, is in the process of reviewing its existing standard form contract of employment for players, drafted years earlier.

You have been asked to critically review the standard form contract, with a view to its modernisation. Clause 27 sets out the various grounds on which WFC may terminate its contract with a player. The provision reads as follows:

"27. WFC may terminate this agreement if -

- 1. you are in material breach of your obligations hereunder;*
- 2. and fail to remedy such breach within ten working days of having received written notice from WFC of the breach, or you conduct yourself in a fashion, manner or way that, in WFC's estimation, is inappropriate and unsuitable;*
- 3. you make any defamatory comment to the media, or on the internet or wheresoever else, leading to public ridicule of WFC, or any disciplinary action is brought against you by the Football Management Committee, which results in a playing ban of more than two matches, or you are party to any other comment or conduct which brings you, the game of football or WFC into dishonourable disrepute;*

4. *or fail to present yourself for the scheduled training sessions on more than three occasions, without a rightful and requisite explanation;*
5. *any injury or illness prevents you from playing football for five consecutive weeks during the League season; or*
6. *you behave in a fashion, manner or way that WFC considers inappropriate and unsuitable.*

Redraft clause 27 so that it is more reader-friendly, adjusting the language and correcting structural errors, as deemed necessary.

(Do not alter the policy indicated).

QUESTION 6

Bill Gayn has established a small business which is involved in the packaging and selling of plant food, which he markets as “Nourisha - your Plant Fertilizer” (“Nourisha”) to several florists.

Gayn is aware that most suppliers of fertilizers include phosphorus, nitrogen and potassium as the basic ingredients of their products. He, however, cannot afford the costs of including comparable amounts of these three ingredients. Instead, Gayn’s “Nourisha” product is composed of a wide blend of ingredients, including recognisable amounts of phosphorus, nitrogen and potassium, and several other substances in slightly smaller quantities.

Investigators from the Ministry of Agriculture have become aware of “Nourisha” on the market, and complaints of its inferior quality. Gayn has now been charged with breaching the standards under the Fertilizers Act 1957 (“the FA”).

The FA defines any product sold for the purpose of enhancing plant growth as a “fertilizer”, and requires that product to contain “significant” proportions of phosphorus, nitrogen and potassium. However, the provisions of the FA do not clarify the intended scope of the word “significant” in the statute.

In court, counsel for Gayn contends that Nourisha is marketed to enhance plant growth, and that the product meets the requirements of the FA. To support this, counsel submits that Nourisha contains clearly recognisable quantities of phosphorus, nitrogen and potassium which, when compared to the other ingredients, are “significant” within the meaning of the FA.

In the alternative, counsel argues that where a term in a penal statute is ambiguous, the benefit of the doubt should be given to the accused.

You are a member of the prosecuting team. Your inquiries into the background to the FA reveal that, decades ago:

- (i) there had been severe damage to agricultural and horticultural products arising from the indiscriminate manufacture and distribution of inferior substances, which were presented and advertised as fertilizers;
- (ii) the National Scientific Academy (“the NSA”), with responsibility for scientific research in the jurisdiction, had made representations to Government to introduce legislation to standardise the requirements for products marketed as fertilizers;
- (iii) the NSA had recommended that, for the purpose of protecting the economic welfare of the jurisdiction, phosphorus, nitrogen and potassium should be the foundational ingredients in fertilizers, with only token amounts of any other substance;
- (iv) many public lectures had been delivered and scholarly articles written on the subject, all tending to support the NSA’s recommendation; and
- (v) parliamentarians had responded to these background developments by enacting the FA.

Prepare a note to the lead prosecutor on the merits of the case against Gayn, carefully reviewing the submissions of Gayn’s counsel in light of the results of your background inquiries.

QUESTION 7

The Money Laundering (Suppression) Act (“the MLSA”) was passed in 1999 as landmark legislation, following intense public concern about the rising levels of organised crime in the jurisdiction, and the inability to forfeit the assets of crime leaders under existing laws.

Among the critical provisions of the MLSA are sections 20 to 32. Under these provisions, the prosecution may apply to the Supreme/High Court for a freezing/restraint order in relation to the assets of a person against whom criminal proceedings have been commenced. The effect of the order is to prohibit all dealings with the specified assets, except as directed by the Court, so as to ensure the preservation of the property should a forfeiture order be subsequently made in the criminal proceedings.

Section 28 of the MLSA provides that once a freezing/restraint order has been granted by the Court, a certified copy of the order must be served on all those prejudiced by it in one of four specified ways. These methods are elaborated in the section.

Proceedings for a freezing/restraint order are civil proceedings.

In 2017, the Supreme/High Court (Civil Proceedings) Act (“the SCCPA”) was passed to address several areas relating to the general practice and procedure in civil matters. The SCCPA does not explicitly repeal or modify any provision of the MLSA.

Section 79 of the SCCPA reads:

“79. Where any order is issued by the Supreme/High Court, a certified copy of the order shall be served on any person prejudiced by the order in the manner prescribed in Schedule III to this Act.”

The prescribed methods of service in Schedule III are in direct conflict with those methods set out in section 28 of the MLSA.

In April 2019, the Director of Public Prosecutions/Attorney General obtained a freezing/restraint order in respect of three luxurious townhouses owned by Guy Mack, who is being prosecuted for

money laundering under the MLSA. Mack resides in one of the properties, but the other two are leased to different companies.

Service of certified copies of the order on relevant parties now needs to be effected.

You are a prosecutor in the matter. Your supervisor passes Mack's case file to you, drawing your attention to the contradiction between the MLSA and the SCCPA on the question of service. He seeks clarification of the legal position.

Write a note to your supervisor, giving your reasoned opinion as to how the conflict in relation to service should be resolved.

QUESTION 8

Gyuse Pastries Limited ("GPL") and Spycie Associates ("SA"), popular sellers of patties and other products, have for years been in fierce competition with each other for market share in your jurisdiction. GPL has been the market leader in the sale of peanut and plantain porridge, while SA has been particularly successful in selling its signature soups.

In June 2018, GPL and SA entered into a formal contract with a view to increasing their respective profitability levels. Clauses 11 and 25 of the contract provide as follows:

"11.1 GPL shall not distribute or sell any food, apart from patties and other pastries, between the hours of 11 am and 3 pm on Sundays at any of its stores, unless it has received special permission from SA.

11.2 SA shall not distribute or sell any food, apart from patties and other pastries, between the hours of 7 pm and 11 pm on Wednesdays at any of its stores, unless it has received special permission from GPL.

...

“25. Both GPL and SA may, if they so choose, distribute or sell food of all types, without restriction as to location or time.

On all the Sundays in April, May and June 2019, GPL sold peanut and plantain porridge between 9 am and 6 pm at several of its stores. In offering the porridge to its customers in this way, GPL did not obtain special permission from SA.

SA has now become aware of the porridge sales on Sundays. SA is upset at what it regards as a breach by GPL of Clause 11.1 of the contract, and is threatening to file a claim for damages in court against GPL. For its part, GPL has asserted that it is not in breach, based on Clause 25 of the contract.

The lead counsel for GPL has passed to you, as junior counsel, a copy of the contract between GPL and SA, highlighting the irreconcilable conflict between Clauses 11 and 25. He requests that you prepare a note to him on the matter.

From your analysis, the other provisions of the contract do not assist in clarifying the intention of the contracting parties. Your research into the contextual background to the contract reveals that at the time of execution, the general managers of both GPL and SA (now retired) were concerned about the respective strengths of the parties in the sale of porridge and soup. They expressed the need to introduce some restrictions, in order to balance these respective advantages in such a way as to allow both sellers the opportunity to maximise sales.

Prepare the note for the lead counsel assessing the merits of GPL’s assertion that it has not breached the contract.

(You are to assume that the agreement between GPL and SA does not breach any law within the jurisdiction.)

END OF PAPER