

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2010

LEGAL DRAFTING AND INTERPRETATION

(MONDAY, AUGUST 16, 2010)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

April, who owns and operates a small supermarket, was recently charged for selling meat without a licence at a place other than a public market. While April admitted that she had no licence to sell fresh meat, she contended that she had not sold fresh meat at her supermarket but rather stored frozen meat which she kept in a deep freeze in a room at the back of the supermarket. Occasionally, special wholesale customers purchased certain types of frozen meat, by requesting it at the counter, at least two weeks in advance.

The Public Health Act provides, *inter alia*:

- “2. *In this Act –*
‘fresh meat’ means meat of any cattle, sheep, goat, pig or turtle, slaughtered for sale and includes imported fresh meat. ‘cold stores’ means any premises or place used for keeping and preserving by a refrigerating process any fresh meat, game or fish intended for the food of man.
- ...
5. *It shall not be lawful for any licensee of any cold stores to sell any fresh meat or fresh fish at or from such cold stores without having first obtained from the Local Council a licence for that purpose.*
6. *The Local Council may grant to any licensee of any cold stores a licence to sell fresh meat or fresh fish at or from any cold stores.*
7. *Every licence granted under this Act to sell fresh meat or fresh fish at or from any cold stores shall be under the hand of the Town Clerk.*

8. *Any fresh meat or fresh fish delivered from any cold stores whether such delivery be made in pursuance of a contract of sale or otherwise (except meat or fish delivered at any premises licensed for the sale of meat or fish under this Act or at any public market) shall be deemed to be sold within the meaning of this Act.*

9. *Every person who shall sell any fresh meat or fresh fish from any cold stores without having first obtained a licence for that purpose from the Local Council shall be liable for such offence to a fine.”*

April has sought your advice.

Advise her. Give reasons.

QUESTION 2

Troy Hopps was charged with unlawfully keeping liquor for sale, contrary to section 56(1) of the Intoxicating Liquor Act. He pleaded not guilty. The only evidence offered by the prosecution was that Hopps had a large quantity of liquor in his residence. He did not offer any defence. The magistrate convicted him because he had not rebutted the presumption established by section 108(1).

The relevant sections of the Intoxicating Liquor Act are as follows –

- “32. *Liquor purchased in accordance with this Chapter or the regulations, may be kept, had, given or consumed, only in the residence in which the*

purchaser resides, except as otherwise provided by this Chapter and the regulations.”

“56.(1) Except as provided by this Chapter, or the regulations, no person shall, by himself, his clerk, employee or agent expose, or keep for sale, or directly or indirectly or upon any pretence, or upon any device, sell or offer to sell, or buy or offer to buy liquor or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property give to any other persons liquor.”

“108.(1) If, on the prosecution of a person charged with selling or keeping for sale or giving, keeping, having, purchasing or receiving of liquor, prima facie proof is given that such person had in his possession, charge or control liquor in respect of which he is being prosecuted, then, unless such person proves that he did not commit the offence with which he is so charged, he may be convicted of the offence.”

Section 32 and subsection (1) of Section 56 mention exceptions, but none of these exceptions applies to this case.

Hopps has sought your advice as to whether he should appeal this decision.

What is your advice? Give reasons.

QUESTION 3

Mary, by her will, which she wrote herself, and which was dated March 21, 2005, appointed executors and trustees and directed that her just debts and funeral and testamentary expenses be paid by her executors. Further, by clause 3, she made certain

pecuniary bequests to wit - \$350,000.00 to her cousin Ron James and \$400,000.00 to her sister Pam Arthurs. By clause 4 she directed her executors to “sell my freehold premises and all my stocks and shares and to divide the net proceeds of sale between my nephews John, Timothy, Mark and my niece Tessa, share and share alike”.

On April 25, 2009 Mary died. At her death her estate consisted of her residence, a bank account with \$2.3M and a number of investments with a total value of \$1.5M. The investments consisted of stocks and shares in four limited liability companies, redeemable debenture stock in the Electricity Company, holdings in public utility bodies and government bonds.

The executors of the will have applied to the court for directions as to which of the investments mentioned above were included in the bequest of “all my stocks and shares”.

It was submitted on behalf of the pecuniary legatees that the phrase “all my stocks and shares” means everything that in name or in substance is stock and all the shares in the capital of the limited liability companies. Had the testatrix simply said “all my shares” all her stocks and shares in the limited liability companies would have passed. Therefore, she must have meant something further by “stock”.

In the Oxford English Dictionary, Vol. IX, part I at p. 992, stock is defined as –

“The subscribed capital of a trading company or the public debt of a nation, municipal corporation, or the like, regarded as transferable property held by the subscribers or creditors, and subject to fluctuations in market value. Also, in a particularized sense, a kind of stock, a particular fund in which money may be invested”.

The second paragraph of the note to that definition is –

“In modern British use the application of the word is narrowed; the subscribed capital of a public company is called shares when it is divided into portions of uniform amount, and stock when any desired amount may be bought or sold. In British use, also, when there is no specific indication, stock is usually taken to refer to those portions of the national debt the principal of which is not repayable, the government being pledged only to the payment of interest in perpetuity”.

It was further submitted on behalf of the pecuniary legatees that in this bequest the words “stocks and shares” are clearly cumulative. Something is meant to be carried by “stocks” which is not carried by “shares” and vice versa. The court cannot look at the circumstances of the case to see whether if the widest construction is given to the phrase there will be enough left to pay the pecuniary legacies after the funeral and testamentary expenses have been paid.

On the other hand, it was submitted on behalf of the residuary legatees, that the true meaning of “all my stocks and shares” in this will is confined to the stocks and shares in the capital in the limited liability companies. The meaning to be construed depends on the context and the fact that in certain contexts stock may include shares does not help in interpreting the phrase in this case. It is clear when the will is taken as a whole that the testatrix intended that the stocks and shares to pass under clause 4, were to be confined to those stocks and shares in the limited companies.

As the presiding judge, you are asked to decide this matter. What is your decision? Give reasons.

QUESTION 4

Your client, Whiskey Gynn, was charged with having the custody of illicit spirits, contrary to section 10 (3) of the Spirits Act.

The evidence before the magistrate was that on the day in question, Corporal Tee Totaler, under the authority of a warrant, carried out a search of Gynn's house. In the back garden Corporal Totaler saw Gynn and another man sitting down at a table with two cups and a bottle between them. The man was seen to pour liquid from the bottle into both cups, but on seeing the policeman, Gynn seized the bottle and threw it to the ground. The bottle with liquid still in it was quickly picked up and sealed by Corporal Totaler. The contents were later certified to be bush rum (otherwise known as J.B.).

At the trial, the magistrate found Gynn guilty as charged.

Section 10 of the Spirits Act provides that:

"10. (1) If an officer makes oath that there is good cause to suspect that any distillery apparatus, spirits or materials for the manufacture of spirits is or are unlawfully kept or deposited in any house or place and states the ground of suspicion, any justice of the peace if he thinks fit, may issue a warrant authorizing the officer to search the house or place.

(2) Anyone so authorised may at any time, either by day or by night, break open and forcibly enter any house or place aforesaid, and seize any distillery apparatus, spirits or material for the manufacture of spirits found therein and either detain them or remove them to a place of safe custody.

- (3) *All distillery apparatus, spirits and materials for the manufacture of spirits so seized shall be absolutely forfeited and the owner of any distillery apparatus, spirits or materials for the manufacture of spirits, or the person in whose custody they are found shall be liable to a penalty not exceeding one thousand dollars and in addition to the penalty of imprisonment for a term not exceeding twelve months.*
- (4) *Anyone found in a house or place where the distillery apparatus, spirits or materials for the manufacture of spirits are found or in the vicinity thereof, shall be deemed, unless he proves the contrary to the satisfaction of the magistrate, to be the owner or person in charge of the distillery apparatus, spirits or materials for the manufacture of spirits.”*

Gynn has now consulted you with a view to appealing this decision.

What is your advice? Give reasons.

QUESTION 5

Cinderalla Davis, a supermarket operator, delivered to the residence of Tiny Tim, a security guard employed at the Shoreline Wharf, consignments of coffee amounting in all to 800 lbs. Tiny sold the coffee to European and British seamen, who took it on board their ships and either consumed it there and then or later sold it when they

returned home. Tiny accounted to Cinderalla for those sales, and was paid a commission on them.

The export of coffee without a licence is prohibited by the Export Coffee (Control) Regulations, 1980, but as a matter of grace, the customs authorities allow seamen to take on board small quantities of coffee for their own consumption. Informations/complaints were preferred against Tiny, as agent of the exporter, for contravening section 3, subsection (1), of the Import, Export and Customs Powers Act, which subsection imposes penalties on the exporter or his agent in respect of “any goods ... brought to any quay or other place for the purpose of being exported in contravention of an order made under the Act”. Informations/complaints were also preferred against Cinderalla for aiding and abetting Tiny.

The magistrate dismissed the informations/complaints on the grounds that the words “or other place” in the section must be construed as *ejusdem generis* with “quay”, and that Tiny’s residence was not *ejusdem generis* with a quay.

Section 3(1) states as follows –

“If any goods –

(a) are imported or exported in contravention of an order under this Act, or

(b) are brought to any quay or other place, or waterborne for the purpose of being exported in contravention of an order under this Act

those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter of the goods or his agent shall be liable to a penalty of five thousand dollars.”

The Director of Public Prosecutions/Attorney General wishes to appeal this decision as he is permitted to do.

What advice would you give? Give reasons.

QUESTION 6

In 2009 Parliament enacted the Income Tax (Amendment) Act 2009, which consisted of only two sections, in the following terms:

- “2. Section 32 of the Income Tax Act is amended by adding thereto the following subsection –*
- (9) In addition to the taxes payable under subsection (1) every taxpayer shall pay a surcharge of two percent of such taxes but this subsection does not apply to –*
- (a) a taxpayer over the age of 65 years;*
- (b) a taxpayer whose income is less than \$800,000; or*
- (c) a Member of Parliament.*
- 3. This Act or any provisions thereof shall come into force on a day to be appointed by the Minister by notice in the Gazette.”*

A notice was subsequently issued by the Minister of Finance declaring that –

“The Income Tax (Amendment) Act 2009, with the exception of paragraph (c) of subsection (9) shall come into force on the first day of January 2010.”

Mr. Eagleye, a law student who was under the age of 65 years, and whose taxable income for the taxation year ending 2010 was over \$800,000, in filing his income tax return for 2010 failed to add the surcharge in estimating his tax liability. In due course

he was assessed for the surcharge, which amounted to \$20,000, being two percent of the taxes payable by him under the amending Act. He has appealed to the Revenue Board, contending that he is not liable to pay the surcharge called for under the Act.

What argument would you advance in support of Eagleye's contention?

QUESTION 7

Your client, Joseph Wild was appointed an attorney under the following power of attorney –

"POWER OF ATTORNEY

***BY THIS POWER OF ATTORNEY** given on the 7th day of March Two Thousand and Ten, I **STRONG MAN** of 99 S.W. Street, Apartment 5, San Juan, Puerto Rico in the Commonwealth of Puerto Rico, Restaurateur, appoint **JOSEPH WILD** of "Sunbeam Cottage", Swan Street, Bayview, **Businessman, my Attorney** for and in my name to do and execute all or any of the following acts deeds and things that is to say:*

- 1. To manage my restaurant, business affairs, investments, securities and personal property for the time being in such manner as the Attorney shall think fit and make any payments in connection with my restaurant, business affairs, investments, securities and personal property.*
- 2. To lease my apartment located at "Alps Apartments", Bayview, without the furniture therein.*

3. *To commence carry on or defend all actions and other proceedings touching my property or affairs or any part thereof or touching anything in which I or my property or affairs may be in anywise concerned.*
4. *To settle compromise or submit to arbitration all accounts claims and disputes between me and any other person or persons.*
5. *To sell my motor car by public auction to the highest bidder.*
6. *To carry into effect and perform all agreements entered into by me with any other person or persons.*
7. *Generally, to act in relation to my property and affairs and to this deed as fully and effectually in all respects as I could do.*

AND I HEREBY UNDERTAKE to ratify everything which my attorney or any substitute or substitutes or agent or agents appointed by him under the power in that behalf hereinbefore contained shall do or purport to do by virtue of this Power of Attorney”.

The instrument was properly executed and registered/recorded.

Wild now seeks your advice with respect to a number of things he proposes to do under the power. He tells you that –

- (i) the restaurant owned by the grantor, which is in a busy commercial area and which sells local dishes, is losing money. However, an overseas fast food company is interested in entering into a joint venture with him to operate the restaurant;

- (ii) he has identified a purchaser for the motor car and wishes to sell it to him by private sale;
- (iii) he has identified a lessee for the apartment but has nowhere to store the furniture and therefore proposes selling the furniture;
- (iv) he wishes to operate his bank account at First Bank.

What is your advice? Give reasons.

QUESTION 8

In February 2009, Shelia was a passenger in a car that was being driven by her husband, Bob, when the car was involved in an accident caused by Bob's negligence. As a result of the accident, Shelia suffered serious injuries.

At the time of the accident section 15 of the Married Women's Property Act provided:

"15. Every married woman has in her own name against all persons, including her husband, the same remedies for the protection and security of her own separate property except that no husband or wife is entitled to sue the other for a tort."

In April 2009, the Family Law Reform Act repealed section 15 of the Married Women's Property Act and provided in section 6 that:

"6. Each of the parties to a marriage has the like right of action in tort against the other as if they were not married."

Shelia and Bob were divorced in December 2009. In May 2010, Shelia brought an action against Bob to recover damages for the injuries she sustained in the accident. Bob has consulted you.

Advise Bob as regards the application of the Family Law Reform Act to Shelia's action.
