

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS 2024

LEGAL DRAFTING AND INTERPRETATION

(WEDNESDAY, JULY 31, 2024)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **ALL** 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

Several decades ago, the Government became concerned about the increasing number of vendors selling their products in coastal areas in your jurisdiction, principally but not exclusively in ports and similar facilities. These areas had become so congested with persons, carriages, bicycles and handcarts that it created general disorder, and disruption in commerce associated with these coastal zones, as well as opportunities for criminal activity.

The Government tackled the problem by enacting the Vending (Restriction) Act (the VRA). The object of the VRA is evident from the actual provisions of the legislation, read as a whole.

Section 26 of the VRA reads as follows:

“26. A person who sells or displays any goods in a port, harbour, wharf, quay, jetty or other coastal facility, without first obtaining a permit from the local authority, is guilty of an offence.”

The VRA provides no definition of the phrase “coastal facility” as used in section 26.

Barbara Hail, a market vendor, has for some time been alarmed at her decreasing ability to earn a living from her small business. She was, however, comforted by the recent announcement that a new public park had just been opened in an area immediately adjoining the main port, as part of the Government’s thrust to create more ‘green spaces’ in the city.

Last month, Hail went to the park and strategically positioned her stall containing items for sale. Hail does not hold a permit from the local authority. She was questioned by a constable, and later charged for displaying goods in a coastal facility, namely, a park, without having a local authority permit, contrary to section 26 of the VRA.

Hail retained the firm in which you are an associate to represent her in the matter. Your supervisor has passed Hail’s file to you requesting that you review the findings of an intern

who had previously worked on the matter. The intern had made a file note which contained, *inter alia*, the following observations:

“I don’t think Hail can be properly charged under this provision. She was vending in a park, which does not fit within the class of places specifically set out in section 26. I believe she has a good defence here. “

Your research reveals that:

- (a) other provisions of the VRA address the issue of vending, both in ports or related facilities, as well as in other places, once the facility is located along or near to the coast of your jurisdiction; and
- (b) the Long Title of the VRA provides:

“AN ACT to prohibit the display and selling of goods by vendors in ports, quays, markets, arcades or any other place located at or near the coast of jurisdiction, without a permit or other official authorisation, and for connected purposes.”

Prepare a memorandum to your supervisor critically reviewing the intern’s file note and indicating whether Hail has cogent grounds on which to resist the charge.

QUESTION 2

Kids Unlimited (KU) is a privately-owned business which provides children’s entertainment services for profit. KU entered into a contract with the local authority/municipal corporation (the Corporation) in your jurisdiction to stage a children’s concert on June 25, 2024, at Crown Park, which is controlled by the Corporation.

Crown Park is equipped with many amenities, including a merry-go-round, stages, stalls, an art and craft centre and changing rooms for performers.

KU had made arrangements with Verne Jarr, an independent contractor, to perform as a clown at Crown Park on June 25, 2024.

On June 25, 2024, Jarr prepared for his performance by changing into a colourful costume at his home, and then applying a thick layer of make-up to his face, so that his actual features were obscured. He then contacted his regular taxi-driver to take him to Crown Park. The driver had to travel on Mount Highway to reach the park.

Jarr arrived at Crown Park at 9:25 a.m.

During a two-hour break in his routine, Jarr decided to walk to the nearby Prospect Community Centre (“the Centre”), which is owned and managed by the Government. The Centre was hosting an art exhibition featuring a young sculptor and, as an art enthusiast, Jarr thought he would use the opportunity to assess the standard of the work on display.

Jarr did not change out of his costume into regular clothing, or remove any of the make-up, nor did he consult with anyone on his decision to leave Crown Park.

On arriving at the Centre, Jarr saw a sign which read:

Voluntary donations towards the maintenance of this facility are welcome.

Jarr made a contribution by paying the cashier and then entered the building. After viewing the exhibition for nearly 35 minutes, Jarr returned to Crown Park by proceeding along Agile Street at about 6:15 p.m. A supervisor at the Corporation, having observed Jarr at the Centre and when crossing the street, told him that his conduct violated the contract between the Corporation and KU and would be reported.

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 the contract between the Corporation and KU appear below:

...

2. *In this contract –*

...

“contracted hours” means the period between the hours of 10 a.m. and 8 p.m. on June 25, 2024;

“public facility” means any public highway, street or road, or any amenity or place that is publicly owned and managed and is accessible to users without charge;

...

4. *The terms of this contract are intended to apply to acts and omissions occurring during the contracted hours.*

5. *KU is authorised to use Crown Park on June 25, 2024 for the purpose of staging a children’s concert during the contracted hours.*

...

14. *KU agrees to be fully responsible for the wrongful acts and omissions of any employee, agent or independent contractor whom it engages to carry out duties associated with the children’s concert during the contracted hours.*

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

16. *No employee, agent or independent contractor of KU may be disguised during the contracted hours while he or she is in a public*

facility outside the boundaries of Crown Park, unless permission has been obtained from the Corporation or a reasonable excuse can be established.

The expression “reasonable excuse” is not defined in the contract.

The Corporation is now seeking your advice on whether KU has breached the terms of its contract. You are in possession of all the facts stated above. Advise Ms Helen Gracej, the Manager for Entertainment Services at the Corporation, giving reasons.

Note:

You are to assume that the contract is valid in all respects.

You are not required to consider the substantive law of torts.

QUESTION 3

Under the Anti-Money Laundering Act (the AMLA), employees of financial institutions are required to report to a prescribed officer any suspicions which they might have that customers are engaged in money laundering activity. Such “suspicious transaction reports” (STRs) are to be made confidentially.

Section 48 of the AMLA is in these terms:

“48. It is an offence to disclose any aspect of a suspicious transaction report to a person who is not an authorised official.”

There is no definition of the word “disclose” in the AMLA, nor any indication from the statute read as a whole as to the intended scope of application of the word. However, the accepted dictionary meaning of “disclose” is “to make known, to reveal or to expose to view”.

Sandra Klay is an employee of Topline Bank (TB). Earlier this year, while at work, Klay saw a STR left open on the desk of another employee. Klay read parts of the STR, which implicated Jon Math, a bank customer who is romantically involved with Lisa Plat. Plat, a florist, is a member of the Executive Committee of Trust Us Service Club, on which Klay also serves as the Secretary. Alarmed, Klay confided in Plat what she had seen, and Plat in turn shared details of the STR with Math.

Neither Plat nor Math is an “authorised official” as defined in the AMLA.

Having received the information from Plat, Math fled the jurisdiction. However, both Klay and Plat have been charged with an offence under section 48 of the AMLA for disclosing an aspect of a suspicious transaction report to a person who is not an authorised official. Plat is represented by Jonting and Jonting, Attorneys-at-Law, which has assigned you to the case.

Counsel in the Office of the Director of Public Prosecutions/Attorney General indicated to you the prosecution’s willingness to enter into a plea bargain, under which Plat would plead guilty to the charge, in exchange for the prosecution seeking a substantially reduced penalty.

You are now weighing the options available to Plat. Your initial view was that section 48 of the AMLA is only limited to ‘bank insiders’, like Klay. However, you are uncertain as to the scope of application of the word “disclose”, as used in section 48 Of the AMLA.

Your further research indicates the following:

- (a) The AMLA was heavily influenced by the Report of the Financial Crime Law Review Committee, which was established by the Government following a high-profile banking scandal in which several executives were implicated in corrupt practices involving the misuse of confidential information.
- (b) In its Report to the Government, the Committee noted the severe risks to the jurisdiction of the misuse of confidential information, in the context of the battle

against money laundering. The Committee repeatedly called attention to the dangers of confidential information being disseminated by financial institution employees, as well as persons outside those institutions, and recommended that strong measures be taken in legislation to address this concern.

Prepare an opinion to your supervisor analysing the relevant issues and indicating whether the firm should recommend that Plat accept the plea bargain offered by the prosecution.

END OF PAPER