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NORMAN MANLEY LAW SCHOOL

COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1988

LEGAL DRAFTING AND INTERPRETATION

(Wednesday, May 18, 1988)

Instructions to Students

- a) Time: 3½ hours
 - b) Answer any FIVE questions.
 - c) In answering any question a student 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.
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QUESTION 1

Section 5 of the Road Traffic (Intoxicated Drivers) Act provides

" 5. No person shall be in an intoxicated condition in any public place."

Section 2 of the same Act defines "public place" as including, inter alia:

" (a) a highway, road, street, lane or other thoroughfare;

(b) a conveyance while it is at, in or on any place that by virtue of paragraph (a) of this section is a public place."

Happy and his wife Pepsi attended a party on Christmas Day where he became quite drunk. Pepsi, however, had nothing intoxicating to drink. After the party, they set off for home with Pepsi driving their car while Happy sat in the front passenger seat making a great deal of noise. While on the highway, they were stopped by a policeman and Happy was charged with being intoxicated in a public place.

The Magistrate before whom the case was heard, acquitted Happy, holding that the word "conveyance" in the statute meant a public conveyance and did not include a privately owned motor car.

He further stated that it was his view that the purpose of the Act was to protect users of public conveyances from possible nuisance by persons who were intoxicated, but that it would be an absurdity that a person should be convicted of an offence when he had taken all reasonable precautions to ensure that he and his car would be driven home safely and without risk and injury to others in a public place.

As Director of Public Prosecutions would you appeal this decision (a procedure permitted by the jurisdiction) or not? Give reasons for your decision.

QUESTION 2

Comment on the following quotation taken from Driedger's "The Construction of Statutes".

" Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament."

QUESTION 3

The Secretary of a co-operative society has written to you as follows:

" Dear Attorney,

A problem has arisen involving different interpretations of rule 42 of our new Rules. This rule states as follows:

' The Board of Directors is vested with the power and authority to purchase, lease, or otherwise acquire real and personal property and to borrow money for that purpose upon the favourable vote of at least three-fourths of all the Directors. '

Some of the Directors are of the view that the provision means that decisions of this nature must be by a majority vote of at least three-fourths of the total membership of the Board. This has meant, on a number of occasions that an otherwise properly constituted meeting of the Board has been unable to make a decision on an urgent matter to do with the acquisition of property because

1988

there were less than twelve Directors present at a meeting (the Board consists of fifteen Directors) or that less than twelve persons, although constituting the required majority of the Directors present, voted in favour of a proposal.

Other Directors, however, are of the view that when the rule speaks of the "favourable vote of at least three-fourths of all the Directors", it is saying that the decision requires a three-fourths, or more, majority of the Directors who are present at a duly constituted meeting of the Board and that this would mean the favourable vote of less than twelve Directors, if the attendance was less than full. Rules 43 and 44 seem to support this view by providing that -

- ' 43. The Directors shall meet together for the dispatch of business at least once in every three months, and subject thereto they may adjourn and otherwise regulate their meetings as they think fit.

Questions arising at any meeting shall be decided by majority vote. In case of any equality of votes the Chairman shall have a second or casting vote.

44. The quorum necessary for the transaction of the business of the Directors shall be a bare majority of the Directors.'

This is our current dilemma and we would appreciate your opinion at your earliest convenience as this is a matter of great urgency."

What is your advice? Give reasons.

QUESTION 4

Tolerant and Bold lived in adjacent townhouses. Each townhouse had two designated areas in front of it for the parking of vehicles connected with that townhouse.

Bold who is a very popular radio personality, regularly had visitors who parked their vehicles in Tolerant's parking areas.

Early Sunday morning last, Tolerant came home to find both his parking areas occupied by vehicles belonging to Bold's friends. Bold was having his usual Saturday night party. Tolerant himself had been at a party and was somewhat intoxicated. In his anger he went into Bold's house, disrupted the party and threatened to 'smash in' his face if he ever again found a car belonging to a visitor of Bold in any of his parking areas.

Bold has now laid a charge against Tolerant under section 12 of the Criminal Code (the only section dealing with threats) which provides as follows:

" 12. Every one commits an offence who by letter, telegram, telephone, cable, radio or otherwise, knowingly utters, conveys or causes any person to receive a threat to cause death or injury to any person. "

As the trial judge in this matter what is your judgment? Give reasons.

QUESTION 5

Section 8 of the Drug (Control) Act reads as follows:

"8. A police officer may, at any time -
(a) without a warrant enter and search any place other than a dwelling house, and

under the authority of a warrant issued under this section, enter and search any dwelling house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;

- (b) search any person found in such place; and
- (c) seize and take away any narcotic found in such place, anything in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such offence."

The accused owns and operates a small clothing store. Last week when the accused was in the store, a police officer entered it and told the accused that he was searching for cocaine. He had no search warrant.

After searching the store and finding no drugs, he attempted to search the accused, but he strongly resisted and forcibly ejected the police officer from the store. A charge of resisting a police officer in the execution of his duty was laid against the accused.

At the trial the police officer admitted under cross-examination that he had no grounds to believe that the accused had any prohibited drugs in his store or on his person. It was also conceded that if the attempted search of the accused was unlawful, the charge should be dismissed, but if the attempted search was lawful the accused should be convicted.

What is your opinion? Give reasons.

QUESTION 6

Papine Stationers Limited, who were the suppliers of books and stationery, had insured their stock-in-trade against fire and wind storm with Caribbean Insurance Company in order to secure a line of credit which the Company had secured from the Bank of Nova Scotia. The policy contained the following provisions:

- " (a) Loss, if any, payable to the Bank of Nova Scotia.
- (b) The Company agrees with the assured ... that if after payment of the premium the property above described, or any part thereof, shall be destroyed or damaged by fire or wind storm at any time between July 28, 1988 and July 27, 1989, the Company will make good by payment or reinstatement or repair all such loss or damage not exceeding the sum set out in this policy."

On September 12, 1988, the building in which Papine Publishers carried on business was damaged by hurricane and its stock-in-trade destroyed. Bank of Nova Scotia sought to recover the sum due under the insurance policy but other creditors of Papine Publishers sought to prevent this on the basis that the bank had acted contrary to section 6 of the Bank Act. Section 6 states as follows:

"6. The Bank may -

- (a) open branches, agencies and offices;
- (b) engage in and carry on business as dealers in gold and silver coin and bullion;
- (c) deal in, discount and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and

other corporations, whether secured by mortgage or otherwise, or national, British, foreign and other public securities:

- (d) lend money or make advances upon the security of, and take as collateral security for any loan or advance made by it, lien or other notes, conditional sales contract or any other instruments or agreements made or entered into respecting the sale of goods, wares and merchandise, or moneys payable thereunder; and
- (e) engage in and carry on such business generally as appertains to the business of banking."

The Bank of Nova Scotia has sought your advice.
What is your advice? Give reasons.

QUESTION 7

Mrs. Hopefull recently came to see you with respect to her getting a divorce. She has been married for twelve years but over the last three years her husband has become very cruel and abusive towards her and she has been subjected to beatings which sometimes resulted in physical damage. She had received medical attention on many occasions. Nevertheless, she continued to live in the matrimonial home 'for the sake of the children'.

She has now decided to end the marriage as she recently read in the newspaper that a new law had been passed that makes it much easier for a person to get a divorce. In fact two years ago she had consulted an attorney-at-law with the intention of ending the marriage and he had advised her that under the provisions of the Divorce Act, she had very good grounds for doing so. She abandoned the idea, however, because she was concerned that the adverse publicity would have a negative effect on the children.

She is now at the end of her tether from the most recent beating and feels that with the new law in force now is the time to end the marriage.

The new law - the Matrimonial Causes Act provides inter alia:

"5. (1) A petition for a decree of dissolution of marriage may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) Subject to subsection (3), in proceedings for a decree of dissolution of marriage the ground shall be held to have been established, and such decree shall be made, if, and only if, the Court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than twelve months immediately preceding the date of filing of the petition for that decree.

(3) A decree of dissolution of marriage shall not be made if the Court is satisfied that there is a reasonable likelihood of cohabitation being resumed."

37. (1) From and after the appointed day -

- (a) proceedings by way of a matrimonial cause shall be instituted in accordance with this Act;
- (b) any such proceedings instituted before that date and pending at the date (hereinafter referred to as "pending proceedings") shall not be continued except in accordance with this section. "

Mrs. Hopefull has sought your advice in this matter.

What is your advice. Give reasons.

1988

QUESTION 8

On October 5, 1988 a tanker belonging to the Oil Company Limited collided with a motor cycle driven by Speedster. Speedster was injured as was the pillion passenger, Toots. As the Oil Company was a public authority and the tanker was being operated in the course of the Company's duties at the time of the accident, the Public Authorities Protection Act applied. Section 2 (1) of the Act provided as follows:

"2. (1) Where any action, prosecution, or other proceeding, is commenced against any person for any act done in pursuance, or execution, or intended execution, of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty, or authority, the following provisions shall have effect -

- (a) the action, prosecution, or proceeding, shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within one year next after the ceasing thereof;
- (b) wherever in any such action judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client."

In the circumstances therefore, Speedster and Toots had to bring an action by April 4, 1989. They did not seek legal advice, however, until March of this year, and their attorneys did not appreciate that the Oil Company was a public authority and so no proceedings were instituted before the expiration of the limitation period.

On May 1, of this year, Section 2 (1) of the Act was amended by extending the limitation period from six months to one year.

Speedster and Toots have sought your advice as to whether they can now bring an action against the Oil Company.

What is your advice. Give reasons
