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LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1991

LEGAL DRAFTING AND INTERPRETATION

(Thursday, May 23, 1991)

Instructions to Students:

- a) Time: 3 1/2 hours
- b) Answer FIVE questions only.
- 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.

QUESTION 1

Reveller and his wife, Tiny Winey, attended a carnival soca jam where he became drunk. Tiny, however, had no alcohol to drink and was cold sober. After the party, they set off for home with Tiny driving the car while Reveller sat in the front passenger seat making a great deal of noise and singing lustily. While on the highway they were stopped by a constable and Reveller was charged with being intoxicated in a public place contrary to section 5 of the Road Traffic (Intoxicated Drivers) Act.

Section 5 of the 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."

The magistrate before whom the matter was heard, acquitted Reveller 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 prevent persons from driving while intoxicated and also 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 on the highway safely and without risk of injury to others in a public place. He then cited the dictum of Lord Blackburn in River Wear Commissioners v Adamson (1877) App. Cas. 746; 764 -

" . . . that we are to take the whole statute together and construe it all together giving the words their ordinary signification unless when so applied they produce an inconsistency or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification."

As Director of Public Prosecutions would you appeal this judgment (a procedure permitted by the jurisdiction) ? Give reasons for your decision.

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QUESTION 2

Sections 10 and 11 of the Industrial Relations Act provide as follows -

- "10. (1) Every employee has a right not to be unfairly dismissed by his employer and to complain against such dismissal to the Industrial Court.
- (2) Where the Court is satisfied that the dismissal is unfair it may award compensation to the employee or, where the court considers that it would be practicable and in accordance with equity, order his reinstatement.

(3) The compensation which may be awarded shall not exceed -

(a) the amount which represents 100 weeks pay; or

(b) \$4,000;

whichever is less.

11. Section 10 does not apply to the dismissal of an employee from any employment if the employee, on or before the effective date of termination of his employment, attained the age at which, in the undertaking in which he was employed was the normal retiring age for an employee holding that position which he held, or if a man, attained the age of sixty-five, or if a woman, attained the age of sixty."

Joan Industrious had been employed as a teacher by Fairplay College, an incorporated body, from September 1982. Under the rules of the College there is an automatic retiring age of 65 for all teachers, male or female. A teacher with ten or more years of service qualifies at age 65 for a pension.

On August 1, 1990, Joan aged 62, received a letter from the College terminating her services as from September 1, 1990. Joan then filed a complaint against the College under section 10.

On a preliminary point raised by the attorney-at-law for the College, the Industrial Court ruled that it had no jurisdiction to hear the complaint for the reason that Section 11 presented a double barrier and not alternative barriers to the dismissed

employee, and that Joan had not surmounted the second barrier.

The Court of Appeal in allowing Joan's appeal against her dismissal, held that the second part of the barrier applied only when there was no retiring age.

The College seeks your advice as to whether it should appeal to the Privy Council.

What is your advice? Give reasons.

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QUESTION 3

By his will (personally drafted) and dated November 2, 1984, the testator, Farely Hill, provided as follows -

"This is the last Will and Testament of me Farely Hill, Builder.

I hereby revoke all previous wills and testamentary dispositions made by me.

I appoint my son Eugene and my daughter Lucy to be my Executors and Trustees.

I direct my Executors to pay all my funeral and testamentary expenses and all my just debts.

I Give, Bequeath and Devise to my son Alonzo a lot of land at Sharks Bay at the south end of the bay, one hundred feet from the sea on the west by the sea running to the tract to the north one hundred feet bound by part of the same tract running

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from the tract on the north to the south end of Sharks Bay. The remainder of the land to my children Russell, Carrigan and Cleophas to their use absolutely.

I Give, Bequeath and Devise to my son Eugene and my daughter Lucy my property at "Brooklyn" together with the house, out-house buildings, improvements and fruit trees thereon. And further that whatever may be in and about the premises at the time of my decease either real or personal property I give bequeath and devise to my two children above named."

The will was duly executed by Farely Hill and witnessed by two witnesses.

Farely Hill died in January 1990 and probate was granted to his executors in March 1991.

The executors have sought your advice with respect to the gift in the last paragraph of the will. They wish to be advised whether the whole piece of land known as "Brooklyn" has been left to them or only that part of the piece defined or marked out by "house, out-house buildings improvements and fruit trees".

Advise them. Give reasons.

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QUESTION 4

The Secretary of the Cash Credit Union has written to you as follows -

"Dear Attorney,

A disagreement has arisen amongst the Directors with respect to the interpretation 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 this 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. The Board consists of fifteen Directors. 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 there were less than twelve Directors present at a meeting or less than twelve Directors, 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.

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QUESTION 5

Your client, Spiritus Fermentus, 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 Sober under the authority of a warrant, carried out a search of Fermentus' house. In the back garden Sober saw Fermentus 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 Fermentus seized the bottle and threw it to the ground. The bottle was then quickly picked up with liquid still in it and sealed by Corporal Sober. The contents were later certified to be bush rum (otherwise known as J.B.).

At the trial, the magistrate found Fermentus 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 authorising 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 to 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."

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

What is your advice? Give reasons.

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QUESTION 6

(a) How does an interpretation act assist in the interpretation of legislation?

(b) Harry recently purchased a lot of land for which he received a registered title under the new land registration system. Last week Monday he completed the fencing-in of the lot as he planned to keep a few cows on it. When he returned to the land on Thursday, however, a section of the fence on the northern and southern boundaries had been removed. On making enquiries from the neighbours, his neighbour on the northern boundary, Miss Ifill, told him that she had removed part of both fences as she claimed she had a right of way over Harry's lot in order for her to reach the main road from her land.

Harry's title, however, has no such easement noted on it and is therefore of the view that Miss Ifill's right has been extinguished under the newland titling system.

The preamble to the Land Titles Act states as follows -

"whereas it is expedient to give certainty to the Title to Estates in Land and to facilitate the proof thereof and also to render dealings with Land more simple and less expensive be it therefore enacted ..."

Section 55 of the Act provides -

preferential  
prior rights  
created in favour  
registered  
proprietor.

55. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority

the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser.

Incumbrances not specially notified which registered land be subject.

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of

way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenants of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument."

Advise Harry as to whether Miss Ifill's right has been extinguished?

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QUESTION 7

Your client, Mrs. Sally Simple, is a widow whose husband died in May 1990. Under his will she inherited four properties and half the interest in his jewellery business. The other half of the business was given to Clive Clever, her godson, who was the manager of the business.

Soon after her husband's will was probated Mrs. Simple asked Clive whether he would manage her interest in the business and the properties she had inherited, as she had no "head for business". He readily agreed, but told her that she would have to give him legal authority in writing, to which she agreed. He then had prepared by an attorney-at-law the power of attorney set out below

which she duly executed but which was not registered/recorded thereafter.

"POWER OF ATTORNEY

I, SALLY SIMPLE of "Fairhaven" St. John, Widow, Hereby Appoint CLIVE CLEVER of "Briar Cottage" St. Thomas, Businessman, to be my true and lawful Attorney for me and in my name and for my use to act and conduct and manage all my affairs as he may think fit with power to execute documents of all kinds, to commence, prosecute or compromise legal or arbitration proceedings of all kinds, to compromise claims of all kinds and to deal with and manage any property of whatever kind or wherever situated in anyway whatever.

This Power of Attorney shall be irrevocable for a period of five years from the date hereof.

AND I HEREBY AGREE and UNDERTAKE to ratify and confirm all and whatsoever that my said Attorney shall lawfully do or cause to be done by virtue of this Deed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Seal this 10th day of March, 1991."

In early April 1991, Mrs. Simple's bank manager telephoned her seeking her confirmation that Clive was authorised to withdraw a large sum of money from her account which she opened many years ago. She told the manager that this was not the case. She then

tried to contact Clive but was told that he had gone to Florida for a few days. The following day Mrs. Simple received two telephone calls from two persons who stated that they had recently contracted to purchase two houses from a Clive Clever but on investigating the titles discovered that they were owned by her.

Mrs. Simple, in a very agitated state, has come to see you. She tells you that it was never her intention that Clive would be able to operate her personal bank account or be able to sell her properties all of which were tenanted. What she had intended was for him to continue to do the day to day management of the jewellery business and manage the properties.

She now therefore seeks your advice with respect to the Power of Attorney she executed.

Advise her, giving reasons.

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QUESTION 8

On October 5, 1989, a tanker belonging to Oil Company collided with a motor cycle driven by Speedster. Speedster was injured as was the pillion passenger, Toots. As 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, 1990. They did not seek legal advice, however, until March 1990, and their attorneys-at-law did not appreciate that Oil Company was a public authority and so no proceedings were instituted before the expiration of the limitation period.

On May 1, 1990, 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 Oil Company.

What is your advice? Give reasons.

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