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NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1992

LEGAL DRAFTING AND INTERPRETATION
(Friday, May 22, 1992)

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.
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QUESTION 1

The Land Valuation Act provides, inter alia for the valuation of properties in villages and rural districts for property tax purposes. Sections 10 and 11 provide as follows-

"10 (1) When the valuation has been completed, the valuator shall forthwith transmit it to the overseer of the village or district, and the overseer shall enter and record it in a book, hereinafter referred to as the valuation book of the village or district, as the case may be.

(2) Copies of the valuation signed by the chairman of the Village or District Council shall be posted up in a conspicuous position in the village or district or such places as are directed by the Authority.

(3) Notice of the completion of the valuation shall be published in the Gazette.

(4) Upon the payment of a fee of one dollar, any person shall be entitled to obtain from the overseer a certificate of valuation of any lot in a village or district and the certificate shall be prima facie evidence of the matter or thing therein contained.

11 (1) Except as otherwise provided in this Act, the owner of any lot in a village or district who considers the valuation of his lot to be excessive may appeal therefrom to the magistrate's court of the judicial district in which the lot is situated.

(2) The appeal shall be made -

(a) by filing with the clerk of the court, within twenty-one days after the publication in the Gazette of the notice of the completion of the valuation a plaint in writing setting out the grounds of appeal, and

(b) by serving within seven days after the date of the filing of the plaint, a copy thereof upon the Council of the village or district."

The valuation of properties in Good Hope Village was carried out and a notice of the completion of the valuation was published in the Gazette on December 16, 1990, while copies of the valuation were not posted until January 3, 1991.

A number of lot owners objected to the procedure adopted claiming that copies of the valuation ought to have been posted before the notice of completion was Gazetted. As a result they brought an action against the Village Council seeking a declaration that the purported valuation was a nullity.

The judge held that the taxes were not legally collectable because:

1. It was essential to read into S.10 (2) that the notices of valuation were required to be made at a particular point in time although there were no words to so indicate and for this purpose there was to be a re-publication as ordered.

2. It was essential to read into S.10 (3) that the notice of the completion of valuation was to await the

publication of the valuation although there were no words so to indicate. A republication is therefore ordered.

3. The right to appeal under S.11 (2) (a) could not be exercised unless there was due compliance with what was ordered under 1 and 2 although there were no words to so indicate.

The Village Council wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 2

Your client, Miss Hopeful, was hit down by a Ministry of Agriculture vehicle while she was crossing the street using a pedestrian crossing. The accident occurred in September 1989.

Miss Hopeful was seriously injured and remained in hospital until October 1990. Thereafter she continued to receive medical attention until January 1991. In February 1991, she instituted legal proceedings against the Attorney General/Ministry of Agriculture. Her case was heard in March 1992, before a judge of the High/Supreme Court who held that her action was statute barred and that it should have been brought within one year of the accident.

Last week Miss Hopeful came to see you with a view to appealing this decision.

Section 2 of the Public Authorities Protection Act provides 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 one year next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within one year 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;
- (c) where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs to be taxed as between solicitor and client as from the time of the tender or payment; but this provision shall not affect costs on any

injunction in the action;

- (d) if, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

(2) This section shall not affect any proceeding by any department of the Government against any local authority or officer of a local authority".

What is your advice? Give reasons.

QUESTION 3

Section 10(1) of An Act to provide for the Control of Narcotic Drugs reads as follows-

"10.(1) A peace 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 writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is any 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, any thing 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 an offence".

The accused owns and operates a small grocery store. One day, when the accused was in the store, a peace officer entered and told the accused he was searching for prohibited drugs; he had no writ of assistance or warrant. After searching the store and finding no drugs, he attempted to search the accused. The accused objected and forcibly ejected the peace officer from the store and locked the door. A charge of resisting a peace officer in the lawful execution of his duty was laid against the accused. At the trial the peace officer admitted during cross-examination that he had no grounds whatever to believe that the accused had any prohibited drugs in his store or on his person.

It is conceded that if the attempted search of the accused was illegal, the charge should be dismissed; but if the attempted search was lawful the accused should be convicted.

What is your judgment? Give reasons.

QUESTION 4

Steven Richards is the executor of the estate of Matilda Leigh, deceased. He tells you that Matilda Leigh was the tenant of a ground floor apartment at No. 17 Kensington Place for four years for which she paid a monthly rent of \$1,000. After her death, as executor, he also paid rent for a period of three months at the same rate. Six months ago he received a notice addressed to Matilda Leigh from the Rent Board which stated that the correct rent payable on the apartment was \$750 per month.

Upon receipt of the notice he wrote to the landlord, who admitted to the fact that excessive rent had been paid, but denied liability to repay the excess to him on the ground that the personal right of the tenant died with her and did not pass to her personal representative.

In an action before a magistrate, the court found for the landlord basing its decision on the provisions of section 4 of the Rent Restriction Act. The relevant statutory provisions before the court were section 4 of the Rent Restriction Act (enacted in 1948) and section 2 of the Law Reform (Miscellaneous Provisions) Act (enacted in 1962).

Section 4 of the Rent Restriction Act states -

- "4. Where any sum has been paid on account for any rent, being a sum which is by virtue of this Act, irrecoverable by the landlord the sum so paid shall be recoverable from the landlord who received the payment

or his legal personal representative by the tenant, by whom it was paid, and any such sum, which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord."

Section 2 of the Law Reform (Miscellaneous Provisions) Act states -

"2 On the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claim for damages on the ground of adultery."

Steven Richards wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

Corporal Goody, tells you that on April 16, 1991, Tony Tough, an attorney-at-law, entered the charge room at the City Centre Police Station at about 6:30 p.m. and requested that he enter in

the station diary a report in reference to a client of his detained at the station. Goody thereupon informed him that his report was not of a kind intended for the diary.

Tony Tough then started to strike the counter with his fist and demanded in a loud voice that the report be entered. When Goody again refused to do so, Tough took the diary which was on the counter and made two circles, against the time column while still demanding 'at the top of his voice' that his report be entered. When he was requested to hand over the diary he threw it down on the counter with a loud bang.

Tony Tough was then arrested and charged with disorderly behavior contrary to section 56 of the ^{minor} Summary Offences Act.

Section 56 provides as follows-

"56 Every person who in any police station is guilty of riotous, indecent or disorderly behavior shall be liable to a fine of two hundred dollars or to imprisonment for two months."

The magistrate before whom the matter was tried acquitted Tony Tough holding that his conduct did not in his opinion amount to *disorderly behavior, that he did not use obscene language and that there was no breach of the peace.

Corporal Goody wishes to appeal this judgment and has sought your advice.

What is your advice? Give reasons.

QUESTION 6

Your client, Joe Easy, was charged on an information which stated as follows-

"On Monday, April 4, 1991 one Joe Easy of Dodge of the parish of St. David and within the jurisdiction of this court did unlawfully wander abroad and lodge in a certain shop, not having any visible means of subsistence and not giving a satisfactory account of himself and is deemed an idle and disorderly person contrary to s. 4(4) of the Vagrancy Act."

Joe was not represented at the trial but pleaded not guilty to the charge. He was found guilty and sentenced to 30 days hard labour. He then indicated to the court that he wished to appeal the decision and to retain counsel.

He now comes to see you and seeks your advice. Section 4(4) of the Act provides as follows-

"4(4) It shall be an offence for a person to wander abroad and lodge in any piazza, out-house or shed, or in any deserted or unoccupied building, or in any mill, sugar or other works, watch house, trash house or other building or within any field, pasture or enclosure, not having any visible means of subsistence, and not giving a satisfactory account of himself."

What is your advice? Give reasons.

QUESTION 7"POWER OF ATTORNEY"

BY THIS POWER OF ATTORNEY given on the 5th day of March One Thousand Nine Hundred and Ninety Two I BOB TONES of Goat Bay, St. Andrew, Businessman, appoint MICHAEL JOJO of 9974 S.W. Street Apartment 56, Capital City, Businessman, my Attorney for me 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 business affairs, investments, securities and personal property for the time being in such manner as the Attorney shall think fit and to make any payments in connection with my business affairs, investments, securities and personal property.
2. 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 affairs may be in anyway concerned.
3. To settle, compromise or submit to arbitration all accounts claims and disputes between me and any other person or persons.
4. To accept the transfer of any stocks, funds, shares, annuities and other securities which shall or may at any time hereinafter be transferred to me whether solely or jointly with any other person or persons.
5. To carry into effect and perform all agreements entered into by me with any other person or persons.

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6. Generally to act in relation to my property and affairs and to this deed as fully and effectually in all respects as I myself could do.

AND I HEREBY UNDERTAKE to ratify everything which my Attorney or any substitute or substitutes or agent or agents contained shall do or purport to do by virtue of this Power of Attorney."

Michael Jojo, the attorney named in the above power of attorney has come to see you. He tells you that Bob Tones, the grantor of the power, who is presently abroad, owns the following-

- (1) a travel agency which he has been managing;
- (2) a house and beach cottage both of which are unoccupied;
- (3) shares in various local companies;
- (4) a personal current and savings account in the National

Bank

He further tells you that-

- (a) he has been approached by an embassy with a view to leasing the house for a period of three years;
- (b) the Hotel and Villa Association tells him that there is a desperate need for beach cottages for visitor occupation and wants him to make the cottage available for that purpose;
- (c) having regard to the present fall in the stock market he thinks he ought to sell the shares before they fall even further in value;
- (d) he has the cheque book and savings account book but does not know whether he can operate them.

Michael Jojo is therefore seeking your advice on his powers with regard to (a) to (d) above.

What is your advice? Give reasons.

QUESTION 8

John Jones died on January 15, 1988, intestate. Surviving him were his widow, Ruth; a son, Thomas, aged 3; and a daughter, Mary, whom the couple adopted on December 10, 1982, pursuant to an adoption order of the court. John and Ruth were married on June 20, 1980. For each it was a first marriage.

On April 1, 1988, letters of administration to the estate of John were granted to Ruth.

Section 15(3) of the Adoption Act reads as follows-

"15(3) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adoption..."

With effect from March 1, 1983, Section 15 was repealed and replaced by the following-

"15(1) For all purposes, as from the date of the making of an adoption order -

- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted child, as if the adopted child had been born in lawful wedlock to the adopting parent.
- (2) The relationship one to another of all persons whether the adopted child, the adopting parent, the kindred of the adopted parent, the parent before the adopting order was made, the kindred of the former parent or any other person, shall for all purposes, be determined in accordance with subsection (1)."

Under the relevant law governing the distribution of an intestate's estate, one third of the estate of a deceased person passes to his surviving spouse, and the remaining two thirds in equal shares to his legitimate children who survive him.

Advise John's personal representative, Ruth, as to how the estate should be distributed.
