

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

LEGAL DRAFTING AND INTERPRETATION
(Friday, May 21, 1993)

Instructions to Students:

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

LD 1993

QUESTION 1

(a) Comment on the dictum of Lord Blackburn in River Wear Commissioners v Adamson (1877) App. Cas. 743 at p. 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."

(b) By a contract of employment, machinists employed ^{BY} ~~to~~ the Sure-Fit Shoe Factory (Sure-Fit), were entitled to double pay on Sundays and holidays except Christmas Day, Boxing Day, New Year's Day, Good Friday and Easter Monday when they were entitled to triple pay.

In 1991, John and Simon, who are machinists at Sure Fit, were required to work on Good Friday and Easter Monday in order to meet a deadline for an overseas order for shoes. Two weeks later, they noted that their pay reflected the triple time payment but not at the statutory rates they were of the opinion they were entitled to by virtue of Section 20 of the Factories Act; that is to say six times the normal rate.

Section 20 provides as follows -

"(1) The Minister may make regulations prescribing the rate at which a person who is employed in a factory, or in any occupation in a factory, shall be paid -

- (a) in respect of any day in excess of eight hours or in respect of work in any week in excess of the normal hours of work prescribed under paragraph (a) of sub-section (1) of section 26;

(b) in respect of work on any public holiday, other than specified in paragraph (c);

(c) in respect of work on Sundays, Christmas Day, Boxing Day, the first week-day of January, Good Friday, Easter Monday or Whit-Monday."

(2) Where, in relation to any factory or to any occupation in a factory, the appropriate rate under paragraphs (a), (b) or (c) of sub-section (1) of this section has not been fixed in regulations made under this section, such rates shall be, in the case of work on any day specified in paragraph (c) of sub-section (1) of this section, twice the rate at which the person employed would but for this section be paid, and, in the case of any other work, one and a half times the rate at which the person employed would but for this section be paid."

The Minister has so far made no regulation with respect to Section 20.

Advise John and Simon as to their entitlement.

QUESTION 2

Joy and Vincent Jones were married on December 8, 1969. They were divorced in 1991, the decree nisi being granted on July 9 and the absolute on September 18. In March 1993, Joy filed an application under the Family Act 1992 which came into effect on April 1, 1992, seeking a declaration that she is entitled to a half share in the former matrimonial home at Baynor Terrace, the furniture therein and the car A2927V.

Additionally she sought injunctions to restrain Vincent from interfering with her quiet enjoyment of the former matrimonial home and from bringing women into the said home.

Counsel for Vincent has applied to the court for the application to be dismissed. He submits that the applicant should have obtained the leave of the court before bringing these proceedings and, this not having been done, the proceedings are not properly before the court. He relies on subsection (3) of section 3 which provides as follows -

"3 (3) Where a decree nisi of dissolution of marriage or a decree of nullity of marriage has been made proceedings within paragraph (d) (i) or paragraph (e) of the definition of "matrimonial cause" (not being proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings in respect of the maintenance of a party) shall not be instituted after the expiration of 12 months after the date of the making of the decree or the day of the coming into force of this Act, whichever is the later, except by leave of the court in which the proceedings are to be instituted."

The definition of "matrimonial cause" provides inter alia -

"matrimonial cause" means

- (a)
- (b)
- (c)
- (d) proceedings between the parties to a marriage in respect of
 - (i) the maintenance of one of the parties to a marriage, or
 - (ii) the custody, guardianship or maintenance of, or access to, a child of the marriage;

- (e) proceedings between the parties to a marriage in respect of the property of those parties or either of them being proceedings in relation to concurrent, pending or completed proceedings for principal relief between the parties."

The application therefore is clearly within the terms of the subsection and the question is whether the leave of the court should have been sought before it was brought.

Counsel for Vincent submits that the subsection means that the leave of the court must be obtained for the institution of proceedings -

- (a) after the expiration of 12 months after the date of the making of the decree, or
 - (b) after the date of the coming into force of this Act, i.e. after April 1, 1992,
- whichever is the later.

Counsel for Joy submits that the subsection means that the leave of the court must be obtained for the institution of proceedings -

- (a) after the expiration of 12 months after the date of the making of the decree; or
 - (b) after the expiration of 12 months after the date of the coming into force of this Act, i.e. after April 1, 1993,
- whichever is the later.

As the judge hearing the matter what is your judgement?
Give reasons.

QUESTION 3

Tom and Mary were married in September 1983, and there was one child of the marriage, a daughter, born in July 1985. In May 1987, Mary went to the United States. A year later she wrote to Tom telling him that she had committed adultery with Harry and that she was pregnant. Tom, within a few days of receiving this letter went to the United States where he saw Mary who was living with Harry. He then returned home.

In June 1988, Mary returned home and resumed living at the matrimonial home, but Mary's attitude towards Tom was one of indifference and there was no sexual intercourse between them although they shared a bed and Mary carried out all the usual duties of a wife in running the home and looking after their daughter.

In October 1990, Harry arrived in the country and Mary and he resumed their relationship. In October 1990, Tom moved out of the bedroom and thereafter Mary ceased to prepare any meals for him. From that time onwards they lived in the same house but lived wholly separate lives. In June 1991, Mary left the matrimonial home to live with Harry.

In August 1991, Tom filed a petition for divorce alleging adultery between Mary and Harry. The petition stated that he had not condoned the adultery alleged but that if he had, the adultery was revived in June 1991 and thereafter.

On March 31, 1992, the Family Proceedings Act came into operation. On May 15, 1992, the suit came before you as a judge of the Supreme/High Court. Neither Mary nor Harry is contesting the petition. Sections 2, 3 and 4 of the Family Proceedings Act provide as follows -

"2. Any presumption of the condonation which arises from the continuance or resumption of marital intercourse may be rebutted on the part of the husband, as well as on the part of a wife, by evidence sufficient to negative the necessary intent.

3. (1) For the purposes of this Act, adultery or cruelty shall not be deemed to have been condoned by reason only of a continuation or resumption of cohabitation between the parties for one period not exceeding three months, or of anything done during such cohabitation, if it is proved that cohabitation was continued or resumed, as the case may be, with a view to effecting a reconciliation.

(2) In calculating for the purposes of this Act, the period for which the respondent has deserted the petitioner without cause, and in considering whether such desertion has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to a reconciliation.

4. Adultery which has been condoned shall not be capable of being revived."

What is your judgement? Give reasons.

QUESTION 4

Lucky, who was a passenger in Ron's car, was sitting in the front passenger's seat when Constable Easy approached the vehicle and asked for the driver. Lucky told him that Ron, who was the driver, had gone to deliver a package and that he would soon return. Constable Easy pointed out that the car was parked in a "no parking zone" and that it had better not be there on his

return. Ten minutes later when Ron had not returned to the car Lucky decided that he had better move the car out of the "no parking zone". So he began pushing the car with his shoulder against the door pillar and both feet on the road with one hand on the steering wheel controlling the direction of the car. While so engaged, Constable Easy returned to the area, approached Lucky and asked him for his driver's permit. He told him that he was not the holder of a driver's permit whereupon Constable Easy arrested him and charged him with driving a car without being the holder of a driver's permit contrary to Section 8 of the Road Traffic Act.

Section 8 provides -

"8. No person shall drive a motor vehicle on a road unless he is the holder of a driver's permit for a motor vehicle of that class, and no person shall employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a driver's permit for a motor vehicle of that class, and if any person acts in contravention of this provision, he shall be liable to a fine of five hundred dollars or imprisonment for six months."

As the magistrate hearing the matter it has been submitted by the prosecution that -

1. Under the Road Traffic Act a driver is defined thus - " 'driver' includes any person actually driving a motor vehicle at any given time and any person in charge thereof for the purpose of driving whenever the same is stationary on any road";
2. the dictionary meaning of "drive" in the Oxford English Dictionary is "to urge onward and direct the course of, to guide a vehicle or the animal that drives it"; and in Chambers Twentieth Century Dictionary "to urge along, to hurry on, to control or guide the movements or operations of";

3. that driving, in reference to a motor vehicle, connotes both propulsion and direction. The steering wheel is essential for driving as are the gear stick, the accelerator pedal and the braking system.
4. In Ames v Macleod, a Scottish case, the accused, who was alleged to have been driving a motor car had been walking beside it as it ran down a slight incline and had steered it. The judges of the Court of Sessions held that the substantial test was whether the accused was controlling the movement and direction of the car and they were of the opinion that he was.

On behalf of Lucky it has been submitted that -

1. in the Insurance Act as well as the Road Traffic Act (U.K.) the definition of "driver" is as follows -
"driver" where a separate person acts as a steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle.
The omission therefore of any reference to a steersman in the Road Traffic Act points with certainty to the conclusion that a steersman is not a driver;
2. In Wallace v Major [1946] KB473, the defendant who had no driver's permit sat in the driver's seat of a disabled motor car while it was being towed by another car. Lord Goddard, C.J. said that "we are bound to construe the Act strictly and ought not to stretch the language in any way; and in my judgment it is impossible to say that a person who is merely steering a vehicle which is being drawn by another vehicle is driving that vehicle."

What is your judgement? Give reasons.

QUESTION 5

In April 1992, a church service was held in the Trinity Church in conjunction with a political party conference.

At the end of the reading of the first lesson by the Minister of Power, a member of the church, Walter, shouted protestingly from the balcony of the church the words "Oh, you hypocrites, how can you use the words of God to justify your policies?" Walter was then escorted from the church and took no further part in the service.

After the reading of the second lesson by the Chief Minister, another church member, Andrew, stood up at the rear of the church and addressed the congregation and said, "I call all members of the church to dissociate themselves from this travesty in the face of heaven by leaving the church now". At this point there was general confusion in the church and Andrew was removed.

The Pastor of the church dissociated himself from the conduct of both men and described their behaviour as improper.

Walter and Andrew were subsequently charged with indecent behaviour contrary to section 5 of the Ecclesiastical Courts Jurisdiction Act 1860. Section 5 states -

- "5. Any person who shall be guilty of riotous, violent or indecent behaviour in any place of religious worship whether during the celebration of divine service or at any other time shall on conviction thereof before a magistrate be liable to a penalty of not more than \$500 or if the magistrate thinks fit to prison for any term not exceeding one month."

The magistrate who heard the matter convicted them and said that the word "indecent" had to be construed in the context of the time when the Act was passed. It did not refer to behaviour tending to corrupt or even deprave, nor was it used with any sexual connotation but in the context of "riotous, violent or indecent behaviour". He further stated that an act done in a church during divine service might be highly indecent when it would not be so at another time.

Walter and Andrew wish to appeal this judgment and have sought your advice.

What is your advice? Give reasons.

QUESTION 6

Recently the government announced the revival of a toll tax system for the use of new highways and bridges. Because of the urgency to collect revenue and strong opposition in Parliament to the proposal, the existing legislation which had been in abeyance for many years was revived.

Sections 2 and 3 of the Highway and Bridges Toll Tax Act 1925 provides -

"2. The relevant authority shall and may as soon as conveniently may be caused to be erected a turnpike gate or gates, or toll gate or gates at or upon any highway or bridge.

3. After compliance with section 2 the respective tolls following shall be demanded and taken at the turnpike or toll gate, turnpike or toll gates, to be erected as aforesaid by such person or persons as the said relevant authority shall

from time to time appoint before any foot-passenger, or any horse, mule, ass, or other beast, or any coach, waggon, cart, or other carriage or any vehicle shall pass or return over the said highway or bridge or through the same, that is to say -

- (a) for every person on foot and with a wheelbarrow or such like carriage the sum of one dollar;
- (b) for every horse, mule or ass the sum of two dollars;
- (c) for every bull, ox, cow, steer, heifer or calf the sum of two dollars;
- (d) for every sheep or lamb, boar, sow or pig, one dollar;
- (e) for every coach, chariot, hearse or chaise, and for every other carriage hung on springs the sum of one dollar for each wheel and for each horse or other beast of draught drawing the same the sum of one dollar;
- (f) for every wagon, timber carriage, dray, truck, cart or other such like carriage with or without springs the sum of two dollars per wheel and for any horse or other beast of draught drawing the same the sum of two dollars."

Two weeks ago a toll gate was erected on the Eastern Highway by the relevant authority and they began charging the prescribed sums.

Last week, two attorneys-at-law, Delroy and Wallace, sought to challenge the application of the legislation with respect to certain types of conveyances.

Delroy, while riding his bicycle, sought to ride on the Eastern Highway but refused to pay any toll for so doing. He claimed that section 3 did not apply to a cyclist. He was

prevented from proceeding.

Later, Wallace in his motor car also refused to pay a toll of four dollars claimed from him. He argued that section 3 did not apply to motor vehicles. After he threatened to sue the toll gate keeper he was allowed to proceed without paying.

The relevant authority is in a state of consternation, having been advised by their own attorney-at-law that all types of conveyances were covered. They have therefore sought your advice.

What is your advice? Give reasons.

QUESTION 7

Ann, a young attorney-at-law, in drafting a lease for her client decided to redraft the clause set out below which was taken from a precedent regularly used by other attorneys-at-law in the firm.

The clause read as follows -

"To permit the lessor and the maintenance trustee or their respective agents either alone or with workmen at any reasonable hour in the daytime after reasonable notice except in the case of emergency to enter the apartment and examine the state of repair and condition thereof and to take an inventory of the landlord's fixtures and fittings therein and about the same and that the lessee will repair and make good all defects or want of repair of which notice in writing shall be given by the lessor or the maintenance trustee to the lessee within three calendar months (or sooner in case of emergency) after giving of such notice and if the lessee shall at anytime make default in the performance of any of the

covenants hereinbefore contained for or relating to the repair or decoration of the apartment it shall be lawful for the lessor (but without prejudice to the right to re-entry under the clause hereinbefore contained) or the maintenance trustee to enter upon the apartment and repair or decorate the same at the expense of the lessee in accordance with the covenants and provisions hereof and the expenses of such repairs or decorations shall be paid by the lessee to the lessor or the maintenance trustee (as the case may be) on demand."

Ann's redraft was as follows -

1. To allow the landlord, the trustee and their agents and employees access:
 - (a) to inspect the condition of the apartment but except in an emergency only during the day and on reasonable notice; and
 - (b) to make good any failure by the tenant to comply with any notice to repair or decorate within a reasonable time.
2. To repay on demand any costs arising under paragraph 1(b)."

Comment on the adequacy or otherwise of the redraft.

QUESTION 8

On June 4, 1992, a contingent of police carried out a raid on premises at Main Street. At the back of the premises two men were seen in the vicinity of a disabled Suzuki car. It was raining at the time. One of the men, Billy, was seen with a tarpaulin in his hand with which he was covering the right front window of the car from which the glass was missing. As the police approached, Billy and the other man, Thompson, ran but were apprehended by other policement and taken back to the car.

On investigation, the car was found to contain 80 packages of ganja weighing together 800lbs. Both men were then arrested and charged with possession of ganja, dealing in ganja and transporting ganja. After being cautioned Thompson said -

"A wi boss Stutta pay wi fe press it and watch it."

On July 27, 1992, the Dangerous Drugs (Amendment) Act came into effect. This Act provided a new offence and replaced a system of fines with that of mandatory imprisonment for offences with respect to dangerous drugs. The short title stated that it was to be read and construed as one with the principal Act.

The new offence of transporting ganja provides as follows -
 "Every person who uses any conveyance for carrying ganja or for purposes of selling or otherwise dealing in ganja or being the owner or person in charge of any conveyance knowingly permits it to be so used is guilty of an offence and on conviction shall be sentenced to imprisonment for a term not exceeding five years."

The new provision for possession and dealing in ganja provides as follows -

"Every person who possesses, sells or otherwise deals in ganja is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years."

Billy and Thompson were found guilty on all charges and sentenced as follows -

Possession of ganja:	3 years imprisonment at hard labour.
Dealing in ganja:	3 years imprisonment at hard labour.
Transporting ganja:	3 years imprisonment at hard labour.
	(The sentences to run cocurrently).

Thompson and Billy wish to appeal these sentences and have sought your advice.

What is your advice? Give reasons.
