

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1994

LEGAL DRAFTING AND INTERPRETATION  
(Tuesday, May 24, 1994)

Instructions to Students:

- (a) Time: 3 1/2 hours
- (b) Answer 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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

One night recently, neighbours heard Tony and Jane engaged in an altercation in Jane's house. He threatened to murder her and she threatened to cut off parts of his body. He was then seen leaving the house in a rage. Fifteen minutes later screams were heard coming from Jane's house and Tony was seen standing on the ground outside an open window of the house with his hands inside. It was subsequently established that Tony had been choking Jane while she lay on a bed beneath the window. Tony was subsequently charged for an offence under Section 29 of the Larceny Act, to wit, being found by night in a building, namely Jane's house, with intent to commit a felony therein, namely to do grievous bodily harm to Jane.

Section 29 provides -

"29. Every person who shall be found by night in any building with intent to commit any felony therein shall be guilty of misdemeanor and sentenced to two years imprisonment."

The judge in handing down judgment said -

"It was submitted on behalf of the accused that for him to be guilty of the offence it had to be committed while his entire body was inside. But I cannot agree. It would be absurd to think that the accused should get away having attempted to commit murder and having committed serious bodily harm.

And I have good authority for this. Lord Blackburn in *River Wear Commissions v Adamson* stated that a court should interpret an Act so as to avoid a result which was manifestly absurd."

Tony was found guilty as charged and sentenced to two years imprisonment. His attorney has sought your opinion as to whether he should appeal the conviction.

Advise him. Give reasons.

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#### QUESTION 2

Lefty, a witness for the prosecution at a preliminary inquiry into a charge of treason, gave evidence on oath.

At the trial, some time later, he gave evidence by affirmation and in fact did so without the normal procedure for determining whether evidence on oath or by affirmation needed to be taken. In fact he was merely asked whether he wished to testify on oath or to affirm.

Part I of the Oaths Act provides as follows -

"2. In this Part the word "officer" means any person duly authorized to administer oaths.

3. (1) Any oath may be administered and taken in the form and manner following, that is to say, the person taking the oath shall hold the Bible in his uplifted hand, and

shall say or repeat after the officer administering the oath the words -

"I swear by Almighty God that ....."

followed by the words of the oath prescribed by law.

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable taking the oath) administer the oath in the form and manner aforesaid without question.

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

4. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, shall not for any purpose affect the validity of such oath.

5. Every person upon objecting to being sworn, and stating as the grounds for such objection either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation, instead of taking an oath, in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath.

On appeal to the Court of Appeal it has been submitted by counsel for the defendant/appellant that the evidence given was not given in compliance with the provisions of the Oaths Act and in particular section 5. He further submitted that -

"....regardless of whether the evidence is reliable or not I submit the evidence of Lefty is no evidence at all and everything that he has said should be completely disregarded. The reason that I advanced for this submission is that his evidence was not given on oath. The submission is that every witness must be sworn on oath before he gives evidence irrespective of the nature of the oath which may vary according to his particular religious belief, he must be sworn. A witness must be permitted to make a solemn affirmation in two circumstances and two circumstances only. One where he has no religious belief or two, where his religious belief precludes him from taking an oath".

As a judge of the Court of Appeal, what is your judgment?

Give reasons.

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QUESTION 3

Comment on the following dictum of Lord Denning in Nothman v Barrett Council [1978] 1 W.L.R. 220, 228 -

"Faced with glaring injustice, the judges are, it is said, impotent, incapable and sterile. Not so with us in this Court. The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive approach'."

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QUESTION 4

Tony Brown has brought an action to recover damages from Orville Jones for the loss of his pig which was killed by Jones' dog, Sweets.

As the presiding magistrate the following has been submitted to you by counsel for Brown -

1. Section 2 of the Dogs (Liability For Injuries) Act provides as follows -

"The owner of every dog shall be liable to damages for injury done to every person or any cattle or sheep by his dog and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog or the owner's knowledge of such previous propensity or that the injury was attributable to neglect

on the part of such owner. Such damages shall be recoverable in any court of competent jurisdiction by the person injured or by the owner of such cattle or sheep killed or injured."

2. Cattle is defined in the Concise Oxford Dictionary as "oxen; livestock".
3. In Child v Hearn (1874-5) 9-10 L.R. Ex. 176, the word 'cattle' was extended to include straying pigs under the Railway Clauses Consolidated Act 1854 which imposed an obligation to fence against the straying of cattle.
4. In Phillips v Bourne [1947] 1 All E.R. 374, the word 'cattle' in Schedule D to the Income Tax Act 1918 (U.K.) was held to include pigs.
5. In Anderson v Ledgister (1955) 6 J.L.R. 358, the Jamaican Court of Appeal held that the word "cattle" include goats.

On the other hand, counsel for Jones submitted that -

1. The Dogs Act 1865 (U.K.), section 1 of which was verbatim with section 2 of the Dogs (Liability for Injuries) Act, was repealed in 1906 and replaced by a new Dogs Act in which cattle was defined to include "horses, mules, asses, goats and swine". Further, this definition was later amended in the Dogs (Amendment) Act to include

poultry. Pigs were therefore not contemplated in the 1865 Act.

2. While the dictionary defines cattle to include livestock the fact that section 2 provides for "cattle or sheep" shows that the statute was intended to be restricted to oxen and sheep only and not to be applied to livestock in general.
3. In Tallents v Bell [1944] 2 All E.R. 474 the plaintiff lost his claim for damages in respect of rabbits destroyed as a result of an attack by dogs. This decision was made under the most recent Dogs Act (U.K.).

What is your judgment? Give reasons.

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#### QUESTION 5

One day last month, Old Pro, a gardener employed by the College of Higher Learning, was stopped by Constable Quick while Old Pro was driving a tractor on Camp Road which is located on the College campus. Constable Quick had noted that the tractor had no registration plates on it. Constable Quick then asked Old Pro for his driver's licence. Old Pro told him that he was not a licensed driver but that as the College was private property he did not need to have a licence to drive and was permitted to drive on the campus



under the college roads regulations. He further stated that many vehicles owned by the College and used exclusively on the campus were not licensed and therefore had no licence plates affixed.

At the entrance to the College is a sign which states -

"NOTICE

The roads on this campus are private. All motorists driving on this campus are subject to the Private Roads (College of Higher Learning) Regulations made by virtue of the Private Roads Act 1934."

The Private Roads (College of Higher Learning) Regulations states inter alia -

- " 2. The College campus is privately owned property.
3. No person shall drive a motor vehicle onto the campus unless he has lawful business to transact thereon.
4. The College has the right to prevent any person from driving a motor vehicle onto or within the campus.
5. All learner driving is prohibited on the campus.
6. Every employee and student of the College who drives a motor vehicle onto the campus shall affix to the motor vehicle the prescribed pass.
7. The College has the right to authorise any employee whether or not he possesses a driver's licence to drive College vehicles on the campus.
8. The College may, with the approval of the Minister, make such rules as it deems necessary under these Regulations."

A copy of these Regulations was given to Constable Quick. Nevertheless, Constable Quick charged Old Pro for driving without a licence contrary to section 8 of the Road Traffic Act 1946 and driving a vehicle without the required registration plates contrary to section 15 of the same Act.

Road is defined in the Road Traffic Act 1946 as follows -

"Any street, road or open space to which the public are granted access and any bridge over which a road passes and includes any privately owned street, road or open space to which the public are granted access either generally or conditionally."

Advise Old Pro.

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QUESTION 6

On April 25, of this year, your client, a Local Government Council, received notice from a householder, Tom Thumb, of his intention to sue the Council for damage caused to his premises by the escape of water from a fire hydrant owned and maintained by your client, and located in front of Thumb's premises. The water escaped on May 15, 1993, and did damage estimated at \$14,000.

The Local Government Act, under which Thumb proposes to sue states inter alia -

"10. Every public road, street, bridge, highway, square, alley or other public place subject to the management, direction and control of the Council, including all crossings, sewers, culverts and approaches, grades, sidewalks and other works made or done therein or thereon by the Council, having regard to the road, street, bridge, highway, square, alley, public place or work made or done therein or thereon, and on default of the Council keeping the same in such reasonable state of repairs, the city shall be responsible for all damage sustained by any person by reason of such default.

11. No action shall be brought against a Council for the recovery of damage occasioned default in its duty of repair as mentioned in Section 10, whether the want of repair was the result of non-feasance or misfeasance, after the expiration of three months from the time when the damages were sustained and no such action shall be continued unless service of the Writ of Summons is made within the said three months.

12. In cases not otherwise provided for, no action shall be brought against a Council for the recovery of damages after the expiration of three months from the date when the damages were sustained and no such action shall be continued if service of the Writ of Summons is not made within the said three months unless upon application to

a Judge in Chambers made not later than one year from such date and after seven days' notice to the Council, the judge allows the claim to be made."

Advise your client on the validity of Thumb's proposed action. Give reasons.

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QUESTION 7

In September 1992, Florence, the owner of a house in your territory, but residing in Florida, U.S.A., entered into an agreement for sale of the house to May Brown. Apart from the usual terms to be found in a contract for sale of land the sale price was stated as \$20,000 United States of America dollars and a special condition included, which stipulated for the consent of the Minister of Finance by virtue of Section 33 of the Exchange Control Act.

Section 33 states -

"33. Except with the consent of the Minister it shall not be lawful in the Island -

- (a) for any person resident outside the Island or any person acting on behalf of any person so resident, to transfer, convey, or do any act forming part of a series of acts calculated to result in the transfer or conveyance by way of sale, exchange,

gift mortgage of any land, buildings or other hereditament situated in the Island or any instrument, or certificate of title relating hereto to any person wherever resident; or

- (b) for any person wherever resident to purchase or agree to purchase or to accept a transfer or conveyance by way of sale, exchange, gift or mortgage of any land, buildings or other hereditament situated in the Island from any person acting on his behalf, or to pay any money to any other person in consideration for, or in connection or association with, any such transfer or conveyance."

Before completion (completion being December 1993), consent was sought by you as Florence's attorney-at-law from the Minister of Finance. Consent was granted for the sale but the purchase price was to be paid in local currency. Florence, however, would be permitted to remit the purchase price by five annual payments of US\$4000. Florence accepted the terms of the Minister's consent and agreed for you to proceed to completion. In November 1993, Parliament passed the Exchange Control (Repeal) Act 1993 thus repealing the Exchange Control Act.

Florence now wishes to know whether she can insist on full payment of the purchase price in United States Dollars.

Advise her. Give reasons.

QUESTION 8"POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY given on the 15th day of April one Thousand Nine Hundred and Ninety Four I TOM TIBBS of Great Bay, Miami Florida, U.S.A., Businessman, appoint MARY DESOUZA of 22 Buttercup Way, Apartment 56, Businesswoman, 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.

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."

MARY DESOUZA, the donee named in the above power of attorney, has come to see you. She tells you that Tom Tibbs, the donor of the power, who is presently in Florida owns the following -

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

She further tells you that -

- (a) she has been approached by an overseas company with a view to leasing the house for a period of three years;
- (b) the Hotel and Villa Association tells her that there is a desperate need for beach cottages for visitor occupation and wants her to make the cottage available for that purpose;
- (c) having regard to the present fall in the stock market she thinks she ought to sell the shares before they fall even further in value;

(d) she has his cheque book and savings account book but does not know whether she can operate them.

Mary Desouza seeks your advice on her powers with regard to (a) to (d) above.

What is your advice? Give reasons.

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