

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1995

LEGAL DRAFTING AND INTERPRETATION

(Friday, May 19, 1995)

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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MONA, KINGSTON, 7. JAMAICA

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Rayon was the owner of a restaurant on High Street. On November 18, 1994, he was suffering from influenza and so he left the restaurant early and went home whereupon he fixed himself a large white rum, honey and lime drink and went to bed at 9.00 p.m.

At about 11.00 that night he received a telephone call from the police informing him that there was an emergency at the restaurant as there had been an attempted break-in.

Rayon therefore immediately drove to the restaurant. He spent an hour there during which time he drank no alcohol. After securing the building along with the police he walked towards his car. As he was about to enter the car he was stopped by Constable Hawkeye and given a breath test which proved positive. He was then charged with driving a motor vehicle while under the influence of alcohol contrary to section 6 of the Road Traffic Act.

Section 6 of the Road Traffic Act provides -

"6 (1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment.

(2) Without prejudice to the foregoing subsection, a person who has driven a motor vehicle while unfit to drive through drink or drugs shall be liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment.

(3) A person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drug.

(4) A police constable may arrest without warrant a person committing an offence under this section."

At the trial before a magistrate, Constable Hawkeye told the court that he noticed that Rayon was a little wobbly and that he smelt of alcohol hence his request for a breath test.

In his defence Rayon told the magistrate that when he got the emergency call he felt he had to get to the restaurant as quickly as possible. He gave no thought to taking a taxi. He was very surprised therefore when he was charged.

The prosecution, however, submitted that Rayon had alternative means of getting to the restaurant and that he should have known that he was over the legal limit. The emergency situation was for the police not Rayon. Very often the police had to wait for long periods before property owners or operators arrived at the scene of a break-in. Rayon could have had an accident or someone could have been killed.

The magistrate, however, found Rayon not guilty and said that it was absurd to think that having regard to the fact that he was only driving because of an emergency, he should have been charged.

The prosecution are unhappy with the judgment and wish to appeal. They have sought your advice.

Advise them. Give reasons.

QUESTION 2

John Tubby is a practising quantity surveyor and since 1984, a founding director of J.T. Real Estate Limited. In addition, since 1986 he has been involved in the real estate business of the firm 6-8 hours each day. In September 1990, he applied to the Real Estate Board for registration as a real estate dealer under the Real Estate Dealers and Developers Act which came into effect in August 1990. In November 1990, however, the Board rejected his application and stated as its reasons -

"That the applicant was not involved 'whole time' continuously in the practice of real estate business for two years prior to the coming into operation of the Act. Further he was not a certified real estate dealer. In arriving at this decision the Board considered the definition of real estate dealer in Section 2, and the provisions of Section 21 and Section 48.

"real estate dealer" means -

- (a) a person who on his own account, engages in the practice of real estate business; and
- (b) an individual who is -
 - (i) a member of a partnership or
 - (ii) a director or officer of a corporate body, which itself engages, on its own account, in the practice of real estate business;"

Section 21 states -

"21. (1) Notwithstanding the definition of real estate dealer, a person shall not be qualified for registration as a real estate dealer if -

(a) in the case of an individual he does not possess the prescribed qualifications for such registration; or

(b) in the case of a body corporate -

(i) a resolution has been passed or an order made by a court of competent jurisdiction for its winding-up;

(ii) a receiver has been appointed for any of its property;

(iii) if at least one of its directors do not possess the prescribed qualifications for registration."

Section 48 states -

"48. Notwithstanding anything in this Act, a person who immediately before the date of commencement of this Act was engaged 'whole time' in the practice of real estate business as a real estate salesman for a continuous period of two years before such date, shall if he has applied for registration within sixty days of the date of commencement of this Act be entitled to continue such practice without being registered or granted a licence under this Act."

John Tubby has appealed this decision. Before the Court of Appeal his attorney-at-law has submitted that the Real Estate Board erred in not approving the registration of the appellant as a real estate dealer in that -

(a) at the time of considering the appellant's application the Board had already approved the registration of J.T. Real Estate Ltd. as a real estate dealer. At all

material times the appellant was a director of the said company therefore the Board would have already determined that the appellant possessed the prescribed qualifications for registration as a real estate dealer.

- (b) the Board failed to ascribe the correct meaning to the words 'whole time' as they appear in section 48 of the Act in that the Board interpreted the words 'whole time' to mean 'exclusively' instead of to mean 'approximately 8 hours per day'.

It was argued on behalf of the Board -

- (i) that section 21 does not require that all the directors are required to have the statutory qualifications of a real estate dealer and consequently the question of estoppel could not arise when having granted the application to J.T. Real Estate Ltd., and in fact another director was a qualified real estate dealer;
- (ii) that the appellant did not comply with section 48 since he practises primarily as a quantity surveyor and that his real estate activity was merely part-time.

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

Give reasons.

QUESTION 3

Your advice has been sought from an overseas charitable organization, Unity, which wishes to extend its charitable work to the Bahamas and Jamaica having already done so in other West Indian countries.

Part of Unity's plan is to acquire land in both countries for the construction of a building in each country to be used as a (home for aged bachelors and widowers) of whatever religious belief they may be, whose lives have been characterised by religious principles, morality and sobriety.

Unity wishes to know whether it would enjoy the benefits of the Trustee Appointment (1850) Act, Cap. 162 (Bahamas) and the Trustees' (Religious, Educational and Charitable) Vesting Act (Jamaica).

The relevant provisions of both statutes state as follows -

"TRUSTEE APPOINTMENT (1850) (BAHAMAS)

AN ACT TO RENDER MORE SIMPLE AND EFFECTUAL THE TITLES BY WHICH CONGREGATIONS OR SOCIETIES FOR PURPOSES OF RELIGIOUS WORSHIP OR EDUCATION HOLD PROPERTY FOR SUCH PURPOSES.

[This Act may be cited as the Trustees Appointment (1850) Act.]

1. Wherever Freehold or Leasehold Property has been or hereafter shall be acquired by any Congregation or Society or Body of Persons associated for Religious Purposes, or for the Promotion of Education, as a Chapel, Meeting House, or other place of Religious Workship, or as a Dwelling House for the Minister of such Congregation, with Offices, Garden, and Glebe, or Land in the Nature of Glebe, for his Use, or as a Schoolhouse, with Schoolmaster's House, Garden, and Playground, or as a College, Academy, or Seminary, with or without Grounds for Air, Exercise, or Recreation, or as a Hall or Rooms for the Meeting or Transaction of the Business of such Congregation or Society or Body of Persons, then ..."

"THE TRUSTEES' (RELIGIOUS, EDUCATIONAL
AND CHARITABLE) VESTING ACT (JAMAICA)

1. This Act may be cited as the Trustees' (Religious, Educational and Charitable) Vesting Act.

2. Wherever freehold, leasehold, or other landed property has been or hereafter shall be acquired by any congregation or society of persons associated for religious purposes, or for the promotion of education, or for any eleemosynary or charitable purpose, as a chapel, meetinghouse, or other place of religious worship, or as a burial ground or cemetery, or as an hospital, poor-house, asylum, or other institution for any eleemosynary or charitable purpose, or as a dwelling-house and glebe for the minister of such congregation, or as a school-house and schoolmaster's house and grounds, or as a college, academy or seminary and grounds, or as a hall or rooms for the meeting or transaction of the business of such congregation or society, or for the furtherance of its objects, then..."

What is your advice? Give reasons.

QUESTION 4

Recently, F. Lee Cochrane, an attorney-at-law who is a part-time lecturer in the Faculty of Legal Studies at the College of Higher Learning, had his vehicle clamped while it was parked on Shed Lane, a road which is located on the College campus.

F. Lee Cochrane, highly incensed at what occurred, wishes to bring an action against the College for unlawful clamping of his vehicle and damages for loss of use.

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 state 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 take such steps as it thinks necessary to ensure that proper parking practices are carried out 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 the Regulations has been given to F. Lee Cochrane. Nevertheless, he is of the view that paragraph 7 is contrary to section 18 of the Road Traffic Act (1946).

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."

Section 18 states as follows -

"No authority except a traffic authority may -

(a) use or cause to be used; or

(b) authorise the constables of the police force or any municipal police force to use,

on any road a wheel clamping device unless it is approved by the Attorney-General."

F. Lee Cochrane has sought your advice.

Advise him. Give reasons.

QUESTION 5

Your client Mark has been charged with placing an engine contrary to section 31 of the Offences Against the Person Act.

The facts before the court were that Mark, on the evening of April 19, 1995, led two wires from an electric light socket and attached one wire to the front door of his cottage and the other to the latch of a front window. He then put the light switch in the ON position and went to bed. By so doing anyone coming in contact with either wire would receive a severe shock.

Later that evening Mark's estranged wife Liddy wishing to enter the cottage to remove some of her property came very near to being electrocuted by Mark's device.

As a result Mark was charged on an indictment which set out inter alia -

"... that on a day unknown between April 3 and April 20 he did place a certain engine namely an electrical device calculated to inflict grievous bodily harm with intent that it should inflict grievous bodily harm upon any person coming in contact with it."

Section 31 of the Offences Against the Person Act states -

"31. Whosoever shall set or place, or cause to be set or placed, any spring gun, man trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude; and whosoever shall knowingly and wilfully permit any such spring gun, man trap, or other engine which may have been set or placed in any place then being in or afterwards coming into his possession or occupation by some other person to continue so set or placed, shall be deemed to have set and placed such gun, trap, or engine with such intent as aforesaid: Provided, that nothing in this section contained shall extend to make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin: Provided also, that nothing in this section shall be deemed to make it unlawful to set or place, or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap, or other engine which shall be set or placed, or caused or continued to be set or placed, in a dwelling-house, or the protection thereof."

Mark was found guilty as charged and sentenced to nine months imprisonment. He wishes to appeal and has sought your advice.

Advise him. Give reasons.

QUESTION 6

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

"RELEASE

I, James Silver of Hibiscus Path, Midtown, in the parish of St. James, for the consideration of the sum of One Thousand Five Hundred Dollars lawful money to me in hand paid by ABC Company Limited of Princess Street, Midtown have remised, released and forever discharged and by these presents do for myself my heirs executors and administrators remise, release and forever discharge the said ABC Company Limited their respective heirs and assigns of and from all causes of action, suits, controversies, trespasses, damages, judgments, executions, claims and demands whatsoever against the said ABC Company Limited which I ever had, now have, or which I, my heirs, executors or administrators hereafter can, shall or may have by reason of any matter or thing whatsoever and also by virtue of any claim or demand for damages by reason of any accident and injury to me claimed to have been sustained on or about the 5th day of April, 1963.

The aforementioned sum is accepted by the undersigned in settlement of all damages injuries and disabilities which may hereafter result from said accident, as well as for those now known to have been caused thereby.

IT IS EXPRESSLY UNDERSTOOD that said sum is paid and accepted not only for time and wages lost, expenses incurred (including legal and medical expenses, if any) and property damaged and destroyed. BUT ALSO in full and final settlement of all claims of every nature whatsoever caused by the said accident.

IN WITNESS WHEREOF I have hereunto set my hand
this 10th day of June 1968.

SIGNED by the said
in the presence of:-

....."

Delroy's draft release provided as follows -

"RELEASE

RECEIVED from THE GENERAL INSURANCE COMPANY LIMITED on behalf of
Newton Abrahams & General Ins. Co. Ltd. the sum of Eighteen
Thousand Dollars only (\$18,000.00) which I accept in full discharge
and satisfaction of all claims, costs and demands whatsoever
whether now or hereafter to become manifest involving injury damage
and/or loss sustained arising directly or indirectly from an
accident wich occurred at Swan Lane on the 8th day of December 1994
involving NG 3006 and motor vehicle Registration No. FM-8660
(passenger in bus).

This amount is received by way of compromise only of the claim
Roland Harker has made and is not an admission of liability on the
part of the said Newton Abrahams & General Ins. Co. Ltd., AND IN
CONSIDERATION THEREOF I HEREBY RELEASE AND DISCHARGE the said
Newton Abrahams & General Ins. Co. Ltd from all claims arising out
of the above accident.

DATED the 5th day of February 1995.

SIGNATURE:.....

ADDRESS:

WITNESS:

ADDRESS:

.....

OCCUPATION:"

Comment on the adequacy or otherwise of Delroy's draft.

QUESTION 7

Your client, Miss Joyless, was hit down by a vehicle, owned by the Department of Health, while she was standing on the sidewalk on Main Street. The accident occurred in January 1994. Miss Joyless was seriously injured and had to be flown to Miami to receive emergency and then specialist care for six weeks. Thereafter she returned to the territory but remained in hospital until February 1995.

On her discharge her doctor advised that she would remain partially disabled for the remainder of her life.

In early March 1995, Miss Joyless came to see you with a view to instituting legal proceedings against the Attorney-General/Department of Health. Her medical expenses had been considerable. However, you advised her that her action was statute barred because the limitation period of one year as provided in the Public Authorities Protection Act (1942) had expired.

In April 1995, however, the Act was amended and now provides as follows -

PUBLIC AUTHORITIES PROTECTION ACT

- "1. This Act may be cited as the Public Authorities Protection Act.
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, 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 years next after the act, neglect or default

complained of, or in case of a continuance of injury or damage, within six years 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;

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

Having read of this amendment, Miss Joyless comes back to see you with the hope that legal proceeding might now be instituted.

Advise her. Give reasons.

QUESTION 8

Mary Souza, mother of Dorothy Souza, has come to see you with respect to the sale of her daughter's house at Queen Gardens.

She shows you the title deeds to the property, and a power of attorney duly executed by her daughter which is attached hereto and identified as "A".

Mary Souza seeks your advice as to whether she can act by virtue of the power of attorney.

Advise her. Give reasons.
