

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1997

**LEGAL DRAFTING AND INTERPRETATION**

**(Monday, May 26, 1997)**

**Instructions to Students**

- (a) Time 3½ 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 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**

Your client, Miss Oldfashion, owns property adjacent to a popular private beach-front entertainment centre.

Last month a well known dance hall promoter advertised a "beach bash" with a line-up of top-line D.J. artistes including the leading D.Js. Yellow Benz and Killer Youth.

Two Saturdays ago, between 4,000 and 5,000 people attended the show which started at 2.00 p.m. As the afternoon progressed, however, it became obvious that the top liners would not be performing. When this was finally announced, the patrons demanded the return of their entrance money. When this demand was refused, 'all hell broke out'. Bottles and other missiles were thrown about. The audio equipment was destroyed and there was general mayhem. In all of this your client's beach cottage was damaged.

At 5.00 p.m. the police were called and within ten minutes they arrived, at which point a Justice of the Peace issued the proclamation in compliance with the Riot Act. At 6.15 p.m. there were still hundreds of persons at the entertainment centre. Thereupon, many were charged under the Act.

Sections 2, 8 and 9 of the Act state as follows -

"2. If any persons, to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace at any time after the passing of this Act, and being required or commanded by any one or more Justice or Justices of the parish or place where such assembly shall be, by proclamation to be made in the Queen's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, notwithstanding such proclamation made, unlawfully, riotously and tumultuously remain or continue together by the space of one hour after such command or

request made by proclamation, shall be adjudged felony, and the offenders therein shall, upon conviction, be liable at the discretion of the Court to be imprisoned for life with or without hard labour.

8. Where any machinery, or any house, shop or building, (including any premises appurtenant to the house, shop or building) has, wholly or partly, been demolished or pulled down by persons riotously and tumultuously assembled together, compensation shall be payable subject to, and in accordance with, the provisions of this Act.

9. The compensation provided for by this Act shall be payable, in proper cases, to persons who prove to the satisfaction of the Authority established by the provisions of section 10, that they have sustained loss by any such demolition or pulling down."

Your client now wishes compensation under the Riot Act and has sought your advice.

Advise her.

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## QUESTION 2

The accused, Topsy Rumbola, was charged that he unlawfully had liquor in a vehicle contrary to section 5 of the Drug and Liquor Control Act.

The evidence before the Magistrate disclosed that on November 15, 1996, at about 7.00 p.m., on his way home to dinner, Rumbola who was a taxi driver, drove to the supermarket in his taxi and purchased liquor which he placed in his taxi for the purpose of driving to his home and leaving the liquor there. He had no passengers in the vehicle.

Before he reached home he was stopped by the police in a road block and the liquor was found in the taxi, and the charge referred to above was laid.

The taxi is a vehicle defined in the Vehicles Act, and the accused's home is a place where liquor may be lawfully consumed.

Section 5 of the Drug and Liquor Control Act states -

"(1) Subject to subsection (2) ... no person by himself, his servant or agent shall have or keep or consume or give liquor in a vehicle as defined in The Vehicles Act.

(2) Subsection (1) does not render it unlawful to have liquor in such a vehicle for the purpose of transporting the liquor from the store or from the outlet ... at which it was purchased to a place where it may be lawfully had or kept or consumed or from such a place to another place where liquor may be lawfully had or kept or consumed.

(3) Subsection (2) does not apply with respect to liquor being transported in a vehicle used for carrying passengers for hire or gain unless the liquor is in the possession of a person who is a bona fide passenger in the vehicle."

The magistrate found Rumbola not guilty and stated that in interpreting section 5 (3), he was of the view that the word "while" had been omitted from the second line of that subsection and that it should be inserted between the words "vehicle" and "used". To do otherwise, he said, would be to produce an absurd result.

He further cited as authority for this approach the dictum of Lord Denning in *Nothman v Barret Council* [1978] 1 WLR 220, 223 where he said -

"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' "

As Director of Public Prosecutions, would you appeal this decision? Give reasons.

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### **QUESTION 3**

Mary owns, inter alia, two properties - one at Westmoorings (the Westmoorings property) and the other at Gulf View (the Gulf View property). She personally made a Will in which she has left both premises to -

"my wonderful granddaughter Ann and her heirs but in case she dies under age eighteen and without children; I leave the Westmoorings property to my grandson Roger (Ann's cousin); but in case he dies under age eighteen and without children, the last mentioned premises shall devise in the same manner as I hereafter declare concerning my Gulf View property. I direct that if my granddaughter Ann dies under age eighteen and without children my Gulf View property be sold and the proceeds be donated to the Guardian Needest Fund."

Ann dies on her eighteenth birthday in a motor vehicular accident. Roger dies three months later having achieved the age of eighteen. Neither of them has children.

The following wish to claim the properties as follows -

- (a) Ann's parents claim both properties;
- (b) Roger's new wife claims the Westmoorings property; and
- (c) The Guardian Needest Fund claim both.

Advise the executor of the Will.

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**QUESTION 4**

Steve Rich is the executor of the estate of Cilda Wray, deceased. He tells you that Cilda Wray was the tenant of a ground floor apartment at "Rose Bank Cottage" for five years for which she paid a monthly rent of \$10,000. After her death, as executor, he continued to pay rent at the same rate. He subsequently received a notice addressed to Cilda Wray from the Rent Board which stated that the correct rent payable on the apartment was \$7,500 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 1982).

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 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."

Steve Rich wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

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#### **QUESTION 5**

Hill was charged with unlawfully making an anonymous telephone call to a woman during which he used obscene, profane, vulgar, lewd, lascivious and indecent language and threats. The prosecution conceded that Hill made no specific threats other than those inherent in words to the effect that he desired sexual intercourse with the woman he called. Subsequently, the Magistrate dismissed the case basing the dismissal on an interpretation of the statute that required both obscene language and threats as distinct elements of the crime.

The charging section reads -

"No person shall engage in or institute a local telephone call, conversation or conference of an anonymous nature and therein use obscene, profane, vulgar, lewd, lascivious or indecent language, suggestions or proposals of an obscene nature and threats of any kind whatsoever."

The prosecution has appealed to the Court of Appeal contending that the dismissal was based upon an erroneous interpretation of the statute. As originally enacted, the statute read -

"No person shall engage in or institute a local telephone call, conversation or conference of an anonymous nature and therein use obscene, profane, vulgar, lewd, lascivious or indecent language, suggestions or proposals."

and the phrase "of an obscene nature and threats of any kind whatsoever" was added later. The prosecution argues that the "and" in the added phrase should be read disjunctively.

Hill argues the opposite. He claims that the legislature used the word "and" in order to restrict the scope of the statute.

Advise the prosecution.

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### QUESTION 6

Jeffrey Jones, a young attorney-at-law who was recently admitted to practice, was instructed by the senior partner in his firm to prepare a lease for a small commercial complex. He was further instructed to follow the terms of an existing lease. On reading the lease, he noted the following covenants with respect to repairing and painting the premises -

"4. When where and so often as occasion shall require well and sufficiently to repair renew rebuild uphold support sustain maintain pave purge scour cleanse glaze empty amend and keep the premises and every part thereof (including all fixtures and additions thereto) and all floors walls columns roofs canopies lifts and escalators (including all



motors and machinery therefor) shafts stairways fences pavements forecourts drains sewers ducts flues conduits wires cables gutters soil and other pipes tanks cisterns pumps and other water and sanitary apparatus thereon with all needful and necessary amendments whatsoever (damage by any of the insured risks excepted so long as the Lessor's policy or policies of insurance in respect thereof shall not have become vitiated or payment of the policy moneys be refused in whole or in part in consequence of some act or default of the Lessee) and to keep all water pipes and water fittings in the premises in good repair and to be responsible in all respects for all neighbouring property or to the respective owners or occupiers thereof through the bursting overflowing or stopping up of such pipes and fittings occasioned by or through the neglect of the Lessee or its servants or agents."

"5. To paint with two coats at least of good quality paint or such other paint as may be first approved by the landlord and in a colour approved by the landlord in a proper and workmanlike manner at least in every third year and in the last year of the said term but not more than once in any continuous period of three years (whether determined by effluxion of time or otherwise howsoever) all the outside wood stucco and ironwork and other outside parts of the demised premises heretofore usually painted or which should be usually painted and any additions thereto and at the same time to creosote distemper or colour or whitewash or otherwise treat all other outside parts of the demised premises as have usually heretofore been so treated or should be so treated all such works as aforesaid to be done to the approval of the landlord."

Jones, however, was of the opinion that both covenants could be improved upon without changing the intent of the covenants. He therefore re-drafted them as follows -

"4. (1) To repair and maintain the interior and exterior of the demised premises including -

- (a) all fixtures and additions thereto,
- (b) all elevators and escalators,
- (c) all conduits, wires and cables,
- (d) all water and sanitary apparatus

except for damage insured against by the lessor so long as the policy of insurance has not been invalidated by any act of the lessee.

(2) The lessee shall be responsible for all damage to the premises or neighbouring property or the owners thereof through the bursting, overflowing or stopping up of the pipes and fittings caused by the lessee or his servants or agents.

5. To paint the outside of the property in every third year of the term and in the last year of the term, however it ends. On each occasion the tenant must -

- (a) use good quality paint and materials, and
- (b) obtain the landlord's approval of the colour scheme and the materials used."

Discuss whether or not Jones has successfully re-drafted the covenants.

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### QUESTION 7

Your client, Simple Simon, who lives adjacent to a large undeveloped lot of land owned by him, recently returned home from an eight week vacation abroad to see the lot of land cleared, divided into lots, roads put in and light and water in place. Other development was in progress.

He immediately went onto the land and spoke to the person who appeared to be in charge of the site. That person informed him that the development was being carried out by Mr. Alec Smartman.

The following day Simple Simon visited Smartman who is his brother-in-law. Smartman expressed great surprise that Simple Simon was angry at what was taking place. Smartman then showed him the Power of Attorney set out below with his (Simple Simon's) signature appearing thereon and duly witnessed.

Simple Simon tells you that he does not recall signing such an instrument though it is his signature. But he recalls being in the company of Smartman some time ago when he got quite drunk. Perhaps it was then that he signed it.

Advise Simple Simon as to the validity of the Power of Attorney and the actions taken under it..

#### "POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I, SIMPLE SIMON of "Lily Cottage", Queenstown, Pensioner, HEREBY APPOINT ALEC SMARTMAN of Clover Leaf Drive, Queenstown, Real Estate Developer, to be my true and lawful Attorney for me and in my name and for my use to act and conduct and manage all affairs as he may think fit with powers to execute documents of all kinds, to commence prosecute or compromise legal or arbitration proceedings of all kinds to compromise claims of all kinds to sell transfer or do any other act concerning any and all dower rights, claims and title which I may possess and to transfer the same in any manner concerned by any corporation company or by law and to enter into or to take possession of any or all lands and to receive and take for me and in my name and to my use all or any rents profits or issues of real estate belonging to me and to let the same in such manner as my attorney shall deem needful and proper."

The power hereby given to my Attorney shall be given the widest interpretation and shall be construed as an express authority to him to act and deal with my affairs as fully and effectually as I myself could do.

This Power of Attorney shall be irrevocable.

Any act or thing done after revocation hereof by my death shall be valid unless notice in writing of such revocation has been made public."

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### **QUESTION 8**

Zip Smoothking, a popular socialite and philanthropist, was recently charged and found guilty under section 10 of the Forfeiture of Proceeds of Drug Trafficking Act 1996 for being in possession of property derived from the proceeds of drug trafficking.

Section 10 of the Act provides as follows -

"10 (1) It shall be an offence for a person to be in possession of property derived from participation in drug trafficking.

(2) In this section references to any person's proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking."

The evidence before the court is that Smoothking owns substantial property, both realty and personalty, but has no known legitimate source of income. In addition, in 1994, he was charged and found guilty of cultivating ganja, an offence included in the definition of drug trafficking under the Act.

Smoothking's counsel submitted before the court that his client was improperly charged and that to apply the Act to him would be in breach of Smoothking's constitutional rights and specifically section 15 of the Constitution which provides -

"15. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not at the time it took place constitute such an offence."

The judge, in rejecting this submission, said -

"I appreciate the force of the submission that the term 'drug trafficking' as a term of art (so used in the Act) did not exist until the Act became law. Nonetheless, each of the elements set out in the Act as constituting drug trafficking had, prior to the enactment of the law, been an offence and would have been understood in ordinary language as an activity comprised in the concept of drug trafficking. The nature of property as property obtained by drug trafficking attaches to it from the moment of its acquisition and remains unchanged. Making possession of such property subject to legal sanction is not in my view, retrospective legislation."

Counsel for Smoothking wishes to appeal this decision and has sought your advice.

Advise Counsel.

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