

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1998

LEGAL DRAFTING AND INTERPRETATION

(Thursday, May 21, 1998)

Instructions to Students:

- (a) Time: 3½ hours
- (b) Answer FIVE questions
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

On Saturday, May 19, 1998, your client Tony Tough, a member of a group known as "the Young Radicals" attended an anti-government rally at a private recreation park just outside a small rural village. There was a large gathering of about 800 young persons at the rally. As each speaker addressed the gathering persons became more agitated until the crowd became quite boisterous so that when the leader of the group, Robert Clark known as 'Red Bobby', began addressing the crowd they were almost in a frenzy and were ready to do anything he ordered.

A nearby resident afraid of what might happen phoned the police station in the nearest town which was approximately four miles away from the park. The police responded very quickly to the call. The police party consisted of a Superintendent, six constables and four civilians who were said to be security guards from a farm near to the police station.

The Superintendent thereupon seized the microphone and ordered the crowd in Her Majesty's name to immediately disperse and go home. The time was approximately 6:15 p.m.

Within minutes thereafter, the crowd began to disperse. However, Tony along with a few members of the Young Radicals, remained at the park and refused to leave. At 7:00 p.m. they were arrested and charged for refusing to disperse from a seditious meeting when ordered to do so contrary to section 2 of the Seditious Meetings Act.

Section 2 of the Act states as follows -

"2. When any Justice, or Officer shall receive information on oath, or have reasonable cause to suspect that any meeting or assembly is held for the purpose of stirring up or inciting any person or persons to commit any act of insurrection or insubordination, or to obtain otherwise than by lawful means any alteration or change in the constitution or government as by law established, or to commit the offence of administering or taking unlawful oaths, or for any seditious purpose whatsoever, every such Justice or Officer shall forthwith proceed to such meeting or assembly and it shall be lawful for such Justice or Officer to require and take the assistance of any number of constables within the place wherein such meeting or assembly as hereinbefore mentioned shall be holden, or any other person or persons in their aid or assistance when they shall deem such aid or assistance to be necessary and requisite; and such Justice or Officer shall then and there order and direct, in Her Majesty's name, all and every the persons whom he shall find there assembled peaceably to disperse and if any person or persons, notwithstanding they have been so ordered and directed to disperse, shall continue together by the space of half an hour after they shall have been so ordered and directed to disperse, then and in every such case the person or persons so continuing, on due proof that such meeting was of a seditious or treasonable nature, being thereof legally convicted, shall be adjudged guilty of felony, and be liable to imprisonment with or without hard labour for a term not exceeding four years."

Tony who represented himself at his trial argued that he was not guilty of the offence for which he was charged since -

1. the meeting was not seditious as there were no physical acts of violence or insurrection at the park;
2. no offence was committed against the Act as the place where the meeting was held was private property and therefore not a public place;
3. that the action of the police was contrary to section 2 of the Act as the police constables who accompanied the Superintendent to the meeting were not taken from the place where the meeting was being held as required by section 2.

The judge, however, rejected the submissions and found Tony guilty as charged and sentenced him to imprisonment for six months.

Tony wishes to appeal his conviction and has sought your advice.

What is your advice? Give reasons.

QUESTION 2

Socamania Simpson and his wife, Butterfly, attended a carnival soca jam where he became drunk. Butterfly, however, had no alcohol to drink and was sober. After the party, they set off for home with Butterfly driving the car while Socamania sat in the front passenger seat making a great deal of noise. While on the highway they were stopped by a policeman and Socamania was charged with being intoxicated in a public place contrary to section 5 of the Road Traffic (Intoxicated Drivers) Act.

Section 5 of the Act provides -

"5. No person shall be in an intoxicated condition in any public place."

Section 2 of the same Act defines public place as including inter alia -

- "(a) a highway, road, street, lane or other thoroughfare;
- (b) a conveyance while it is at, in or on any place that by virtue of paragraph (a) of this section is a public place."

The magistrate before whom the matter was heard, acquitted Socamania holding that the word "conveyance" in the statute meant a public conveyance and did not include a privately owned motor car.

He further stated that it was his view that the purpose of the Act was to prevent persons from driving while intoxicated and this was supported by the short title to the Act. It was also to protect users of public conveyances from possible nuisance by persons who were intoxicated, and it would be an absurdity that a person should be convicted of an offence when he has taken all reasonable precautions to ensure that he and his car would be driven on the highway safely and without risk of injury to others in a public place. He then cited the dictum of Lord Blackburn in River Wear Commissioners v Adamson (1877) App Cas. 746; 764 -

" . . . that we are to take the whole statute together and construe it all together giving the words their ordinary significance 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."

As Director of Public Prosecutions would you appeal this judgment (a procedure permitted by the jurisdiction)?

Give reasons for your decision.

QUESTION 3

At about 6:00 a.m. on Saturday, May 8, 1998, police constable, Sharpstar, was driving his car along Ocean Boulevard when he saw a car in front of him travelling in a zig-zag manner. He therefore accelerated and overtook it. While overtaking the car he saw Simple Simon occupying part of the driver's set but *Seat* leaning over to his right against the door and Mary Muffet sitting beside him, partially in the driver's seat and leaning towards him. Further, he saw Mary's hands on the steering wheel steering the car. He then signalled them to stop and warned them for prosecution. Mary, he then learnt, was not the holder of a driver's permit.

Mary was subsequently charged for driving without being the holder of a driver's permit and driving without reasonable consideration for other persons using the road.

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

1. Under the Motor Vehicles and Road Traffic Act a driver is defined thus -
"driver include 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 as essential for driving as the gear stick, the accelerator pedal and the braking system. In law any act may be done singly or jointly;
4. in the final analysis, it becomes a question of fact whether the person in charge has delegated to another the operation of any of the controls. In this case Simple delegated the driving to Mary.

On behalf of Mary it has been submitted that -

1. although Mary had her hands on the steering wheel Simple's left hand was in fact controlling the steering wheel although his hand was out of the sight of the constable and further Simple was in control of the pedals of the car and the gear stick.
2. 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 Motor Vehicle and Road Traffic Act points with certainty to the conclusion that a steersman is not a driver;

3. in Marsh v Moores [1949] 2 K.B. 208, the authorized driver of a car sat in the passenger seat beside a person who had no driving permit but whom he allowed to drive. But he was ready if necessary to operate the handbrake. **Lynskey J.** said obiter that the authorized driver -
". . . still retained the control and management of the vehicle. He still retained some power to control the driving of the vehicle by operating the handbrake and in instructing the other person as to how she should drive. In these circumstances it seems to me that he still remained the driver of the car".

What is your judgment? Give reasons.

QUESTION 4

You advice has been sought from a Canadian charitable organization, World Aid, which wishes to extend its charitable work to the Bahamas and Jamaica having already done so in Central and South America.

Part of World Aid'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.

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

The relevant provisions of both statutes state as follows -

"TRUSTEE APPOINTMENT (1850) ACT (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 Trustee 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 Worship, 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 5

Recently, as a result of an impending eclipse of the sun the Prime Minister who is the Minister responsible for the Holidays (Public General Act), on the afternoon of the day before the eclipse (February 25) announced that the following day (the day of the eclipse February 26) would be a general public holiday.

Your client, John Applewait, a farmer, had a large export order of papayas which were due to be exported to New York on February 26. However, as a result of the declaration of the holiday none of his employees turned up for work. The papayas were therefor not exported on that day. Had he had prior notice he would have made the necessary arrangements for his employees to report for work.

Having regard to the terms of his contract with his purchasers in New York, he might be in breach of his contract and liable to pay damages depending on whether the declaration of the public holiday was done in conformity with the Holidays (Public General) Act or not.

The relevant sections of the Act are as follows -

"2. The several days mentioned in the Schedule and such other special day or days as may be appointed under section 7 are hereby declared to be "Public General Holidays".

"7. It shall be lawful for the Minister, from time to time as he may see fit, by order, to be published in the *Gazette* not less than seven days before the day or the first of the days hereinafter mentioned, to appoint any special day or days, not exceeding three at any one time, to be observed as a Public General Holiday, either throughout the Island or in any particular parish or part thereof, and the day or days so appointed shall thereupon, for the time being, be a Public General Holiday, and all the provisions of this Act shall apply thereto in precisely the same manner as if such day or days had originally been mentioned in the Schedule".

"11. Every person who does anything which is forbidden by his Act, or willfully omits, neglects or refuses to do anything required by this Act to be done by him, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty dollars."

"13. - (1) The Minister may by order amend the Schedule or substitute a new Schedule therefor.

(2) Every order made under this section shall be published in the *Gazette* at least seven days before the coming into operation of such order.

(3) Every order made under this section shall be subject to negative resolution of the House of Representatives".

"SCHEDULE

1. New Year's Day, or in case New Year's Day falls on Sunday then the day after New Year's Day.
2. Ash Wednesday.
3. Easter Monday
4. The day after Christmas, or when Christmas Day falls on a Sunday, then the 26th and 27th of December.
5. A day appointed by the minister for national observance"

Applewait has therefore sought your advice.

What is your advice? Give reasons.

QUESTION 6

Al Scott who recently graduated from Law School, has been instructed to draft a guarantee by the senior partner of the firm in which he is an associate. This guarantee is with respect to an assignment of a lease.

The senior partner gives him the following instrument set out below as the precedent he should follow -

"GUARANTEE

The Guarantor in consideration of the Vendor making the foregoing assignment at the request of the Guarantor hereby covenants with the Vendor that the Purchaser will at all times hereafter duly pay the rent reserved by the Lease, the service charges (if any) and all other payments and costs thereby provided for and will duly observe and perform all the covenants on the part of the Lessee and conditions therein contained and that the Guarantor will at all times hereafter duly observe and perform all covenants on the part of the Guarantor with the Landlord of the property and will at all times hereafter pay and make good to the Vendor on demand all losses costs damages and expenses occasioned to the Vendor by the non-payment of the said rents, service charges or other payments or the breach non-observance or non-performance of any of the said covenants and conditions or any breach of the Purchaser's covenants as to payments observance and performance and for indemnity expressed in this assignment and notwithstanding any termination of the obligations of the Purchaser or any successors in title of the Purchaser by reason of disclaimer by any Trustee in bankruptcy or liquidator or the winding-up of the Purchaser or any successor in title of the Purchaser being a Corporation IT IS HEREBY AGREED AND DECLARED that any neglect forbearance or indulgence of the Vendor in enforcing or giving time to the Purchaser (or any Trustee in bankruptcy receiver or liquidator of the Purchaser) for any payments or observance of performance of any obligation shall not in any way release the Guarantor in respect of the Guarantor's liability under this present guarantee."

Al, however, 'fired up" with theories of a more modern drafting style redrafted the instrument as follows -

- "1. In consideration for this assignment by the seller, the guarantor agrees to:
 - (a) comply with any covenant, the tenant has broken; and
 - (b) indemnify the landlord and the seller against any consequences of the tenant's breach.
2. The guarantor's liability continues despite:
 - (a) lenience by the landlord to the tenant; or
 - (b) disclaimer in the bankruptcy or liquidation of the tenant."

Comment on the adequacy or otherwise of Al's redraft.

QUESTION 7

"POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY given on the 15th day of April one Thousand, Nine Hundred and Ninety Eight, I John DeSouza of Coral 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 hat is to say -

1. To manage my business affairs, investments, securities and personal property for the time being in such manner as the Atorney 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 power 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 John DeSouza, 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) and to (d) above.

What is your advice? Give reasons.

QUESTION 8

In January 1997, Mike Sodecent sold a house to Amy Sweets on behalf of Tony Smartman. It had been verbally agreed that Sodecent would be paid a commission of five percent on the sale price of the house. In December 1997 Smartman received from Sweets the full purchase price and Sodecent therefore sought his commission.

In November 1987, however, The Illegal Contracts Act was amended by the addition of a new section designated section 10. As a result of that section Smartman claimed that he was not legally bound to pay the commission, as the contract between himself and Sodecent was a verbal one.

Section 10 states as follows:

"No action shall be brought to charge any person for the payment of a commission or other remuneration for the sale of real property unless the agreement upon which such action shall be brought shall be in writing separate from the sale agreement and signed by the party to be charged therewith or some person thereunto by him lawfully authorised."

Sodecent, who is of the view that section 10 does not apply to his case, now seeks your advice.

What is your advice? Give reasons.
