

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1999

LEGAL DRAFTING AND INTERPRETATION

(Thursday, May 20, 1999)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Mr. Zac Suraz was charged with Treason. The charge against him was that he, along with other persons, unknown, did bomb with an incendiary device, the legislative building with the intention to overthrow the government contrary to section 2 of the Treason Felony Act.

The evidence was that on the night of July 3, 1998, Suraz attacked the legislative building with a device called a "molotov cocktail". He also wrote in chalk on one of the walls "Away with the monarchy". There was an eye-witness who identified him at the time of the bombing. Further, forensic experts found his fingerprints on fragments of the bottle used to make the molotov cocktail.

At the end of his trial, the judge found Suraz not guilty and said that not only was section 2 not the appropriate section but it was absurd that in 1998 such a section could still be in the laws of the country.

.Sections 1, 2 and 3 of the Treason Felony Act state as follows -

- "1. This Law may be cited as the Treason Felony Act.
2. If any person or persons whosoever, after the passing of this Act, shall within this country, compass, imagine, invent, devise or intend to deprive or depose our most Gracious Lady the Queen, her heirs or successors, from the style, honour or royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors, in order by force or constraint to compel her or them to change his or their measures of counsels, or to put any force or restraint upon, or in order to intimidate or overawe both Houses of either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other of Her Majesty's dominions or countries under the obeisance of Her Majesty, her heirs or successors; and such compassing, imaginations, inventions, devices or intentions, or any of

them shall express, utter, or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the Court, to penal servitude for the term of his or her natural life, or for any term not less than three years, or to be imprisoned for a term not exceeding two years, with or without hard labour, as the Court shall direct.

3. If any person or persons whosoever, after the passing of this Act, shall within this country, compass, imagine, invent, devise, or intend to levy war, or incite insurrection against the Government, as by law established, in order by force of constraint to compel the Governor and Legislative Council, or either of them, to consent to alter or change the constitution as by Law established, or in order to put any force or constraint upon, or to intimidate and overawe the Governor and Legislative Council, or either of them, or to move or stir any foreigner or stranger with force to invade this country, and shall express, utter or declare, by publishing any printing or writing, or by open and advised speaking, or any overt act or deed, such compassings, imaginations, inventions, devices, or intentions, or any of them, every person so offending shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to penal servitude for the term of his or her natural life, or for any term not less than three years, or to be imprisoned for a term not exceeding two years, with or without hard labour, as the Court shall direct."

As Director of Public Prosecutions, would you appeal this decision (a procedure permitted in the jurisdiction)? Give reasons.

QUESTION 2

Your client, Banana Products Ltd. (BPL), which is engaged in the manufacture and sale of a variety of banana products, entered into the following contract with International Food Traders (IFT) -

"This Agreement dated the 8th day of May 1996 Between Banana Products Ltd. (BPL) of 25 Industrial Drive, Bay Town and International Food Traders (IFT) of 2514, 7th Avenue, New York 3107, New York, U.S.A.

Whereas IFT warrants that it has the right title and interest in and to certain inventions relating to methods and apparatus for processing fruit solids and to certain inventions relating to processing products and know how in relation thereto and

Whereas IFT has obtained local Patent No. 1117 and will obtain additional patents in the territories of the agreement and is now desirous of exploiting said inventions by licensing in the territories of the agreement and

Whereas BPL is now interested in obtaining from IFT certain rights to use said inventions in processing the banana fruit,

Now therefore in consideration of the foregoing premises it is agreed as follows -

1. The term 'territories of the agreement or territories' shall mean and be limited to the following countries: Jamaica, The Bahamas, Trinidad, St. Kitts, St. Vincent, Barbados, Tobago, Grenada, St. Lucia, Guyana, Belize and Dominica.
2. In consideration for royalties and other considerations hereafter stated or implied IFT hereby grants to BPL the right to use licensed inventions to make use and sell agglomerated

products in the territories of the agreement only for the term of ten years.

3. This instrument is the entire agreement between the parties and no modification shall be effective unless written and signed by both parties.
4. For any products agglomerated by BPL pursuant to this licence and exported to any country other than the licensed territories, IFT or a party to be designated by IFT shall have the right of first refusal to be the exclusive sales agent."

Soon after this contract was entered into BPL began manufacturing various products, pursuant to the licence, which they exported to the territories of the agreement.

In early 1999, having become aware of a lucrative market for its products in Venezuela, Curacao and Aruba, BPL sought permission from IFT for their products to be sold in these countries and for IFT to act as their agent. But IFT denied permission for the products to be sold in those countries and referred to clause 2 of the contract.

BPL has now sought your advice in light of the contract they have with IFT.

What is your advice? Give reasons.

QUESTION 3

A testator, Alvin Aloung, by his will (which he had made himself), having appointed his executors and provided for his debts and testamentary expenses to be paid, provided as follows -

"to divide equally between my four children seventy-five (75%) of all my personal belongings and money that may be left in the bank and the other twenty-five (25%) of all my belongings to go to my wife Edna and I further state that my Dwelling House is not to be sold until after the death of my wife the said Edna Aloung. Only should in case of she getting

married again, then the house shall be sold and the money divided as above."

The will was then dated 7th July, 1994 and properly executed.

The testator died in August 1998. In 1995 he sold the house he had lived in for many years in the city. He then leased a house on a yearly tenancy and purchased a large agricultural property with a house thereon. This house he occupied for about three days each week when he visited the property to inspect it and to obtain produce which he sold in a shop which he operated in the city. He also owned a commercial building out of which he carried on his business activities.

Since the testator's death, a dispute has arisen between the beneficiaries and the executors as to the interpretation to be given to the will.

By an originating summons taken out by the executors, they seek answers to the following questions -

1. Does the expression "75% of all my personal belongings and money that may be left in the Bank" mean -
 - (a) 75% of all real and personal estate of which the deceased was legal or equitable owner of at the date of his death; or
 - (b) 75% of only the personal chattels and effects and money in the bank of the deceased?

2. Does the expression "25% of all my belongings to go to my wife" mean -
 - (a) 25% of all real and personal estate of which the deceased was legal or equitable owner at the date of his death; or
 - (b) 25% of all the personal estate of the deceased; or
 - (c) 25% of only the personal chattels and effects of the deceased and moneys in the bank of which the deceased died possessed; or
 - (d) 25% of only the personal chattels and effects of the deceased?

3. Does the term "dwelling house" used in the will mean the agricultural property with the house thereon?

As the judge hearing the application, what is your judgment? Give reasons.

QUESTION 4

Your client, Eddy Reid, was charged and convicted for an offence committed under the Vagrancy Act -

"that on Tuesday 21st March, 1999, and within the jurisdiction of this Court, he was unlawfully found with an offensive weapon, to wit a home-made gas bomb, with intent to commit a felony, contrary to section 6(2) of the Vagrancy Act."

Before the magistrate, the evidence led in support of this charge was that Constable Nojoke, in company with others, was on patrol in the vicinity of Prince Street and Bay Street (a commercial area) on March 21 at about 4.00 a.m. He saw three men in front of him and each appeared to have bottles in their back pockets. Constable Nojoke called to the three men who looked in his direction and then started to run in different directions. He pursued Reid and held him and took from his right back pocket one clear half pint bottle containing liquid with a paper stopper. Inside this bottle were pebbles and broken glass. As he held the accused, the accused said "Is the boy in the red shirt named Bobby give me to throw on a house".

Constable Nojoke then arrested Reid and charged him for being armed with an offensive weapon and cautioned him.

The bottle and its contents were subsequently sent to the forensic laboratory for analysis where it was found to contain gasoline, two pieces of broken glass and seven stone pebbles. The evidence, however, of the analyst was that if the bottle had been lit

in that condition, it would not have exploded. If it had been lit and thrown it would not necessarily have caused a fire.

On behalf of your client (who did not give evidence at his trial), his attorney-at-law submitted -

- (i) there was no evidence before the Court to establish that the bottle alleged to be taken from the accused was an offensive weapon, and in fact was not designed to cause bodily injury;
- (ii) there was no evidence before the Court that the accused had the bottle alleged to be found on him with intent to commit a felony.

The Vagrancy Act provides, *inter alia* -

"Rogues and Vagabonds.

6. Every person coming within any of the following provisions shall be deemed a rogue and a vagabond -

- (1) Every person having in his custody or possession, without lawful excuse (the proof of which excuse shall be on such person), any pick-lock, key, crow-jack, bit or other implement of house-breaking, with intent feloniously to break into any dwelling-house, warehouse, store, shop or other building.
- (2) Every person being armed with any gun, pistol, sword, cutlass, razor, bludgeon, or other offensive weapon or instrument, with intent to commit any criminal act.
- (3) Every person found by night, without any lawful excuse (the proof of which excuse shall be on such person), in or upon any dwelling-house, warehouse, coach-house, stable, or out-house, or in any enclosed garden, yard, or area, or in, or on board any ship, or other vessel when lying or being in any port or place within the Island.
- (4) Every suspected person, or reputed thief, frequenting any wharf, or warehouse near or adjoining thereto, or any public place leading thereto, or any public place whatsoever or any place adjacent to a public place, with intent to commit a felony.

(5) Every person apprehended as an idle and disorderly person, and violently resisting any constable so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended."

7 Every person convicted of being a rogue and a vagabond shall be liable to imprisonment, with or without hard labour, for a term not exceeding twelve months, and every such pick-lock, key, crow-jack, bit or other implement, and every such gun, pistol, sword, cutlass, razor, bludgeon, or other offensive weapon or instrument as aforesaid shall, on the conviction of the offender, be forfeited to Her Majesty."

Reid wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

Mod, Dern & Withit, attorneys-at-law, are in the process of updating their precedents. They have recently employed a young attorney-at-law, Merv Moon, to assist in this task.

One of the instruments being updated is a residential lease. Amongst the covenants to be redrafted by Merv were the following -

"2. The Tenant **HEREBY COVENANTS** with the Landlord in manner following (that is to say):-

(a) To pay the several rents and sums hereby reserved at the times and in the manner at and in which the same are hereinbefore reserved and made payable without any deduction.

(b) If any monies payable by the Tenant to the Landlord under this or any other covenant or provision of this Lease shall be due but unpaid for fourteen days to pay on demand to the Landlord interest at a rate equal to 3% above the base rate for the time being of Scotia Bank Limited such interest to be calculated daily from that date when such monies were due until the date such monies are received by the Landlord or the duly authorised agent both dates inclusive."

"4. Any certificate demand for payment or notice requiring to be made upon or given to the Tenant shall be well and sufficiently made or given if sent by the Landlord or their agents through the post by registered letter addressed to the Tenant at the demised premises or left for the Tenant at the demised premises and any notice required to be given to the Landlord shall be well and sufficiently given if sent by the Tenant through the post by registered letter addressed to the Landlord at the registered office or usual or last known place of business or left for them at such registered office or such place of business or if sent as aforesaid addressed to any agent from time to time authorised by the Landlord to receive the same at the usual or last known place of business And any demand or notice sent by post in either case shall be deemed to have been delivered in the usual course of post."

Merv's draft was as follows -

"2. The tenant must:

- (1) (a) Pay any money due to the landlord (under this lease) without deduction;
- (b) Pay interest if asked:
 - (i) at 3% above the base rate at the landlord's clearing bank,
 - (ii) calculated daily on any money 14 days or more overdue,
 - (iii) for each day it has been overdue."

"4. (1) Documents may be served by registered post or by delivery.

(2) The address for service under paragraph (1) are -

- (a) for the tenant, the premises, and
- (b) for the landlord,
 - (i) its registered office or usual or last known place of business or
 - (ii) the usual or last known place of business of an agent authorised to accept service.

(3) Any document served by post will be taken to have been received on the second day on which postal deliveries are made after posting."

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

QUESTION 6

You act on behalf of the Commissioner of Income Tax. Lewis Allen, a former government employee, is 66 years old and is the recipient of a pension from the government along with National Insurance benefits and an approved pension from a previous employer. His total income from these sources is \$450,000 per annum. In January 1998 he claimed exemption under section 12 of the Income Tax Act but the claim was rejected by the Commissioner of Income Tax.

Section 12 provides as follows -

"12. There shall be exempt from tax...

- (a) As regards the year 1996 and any subsequent year of assessment,
 - (i) \$150,000 of the income of any individual derived from a superannuation allowance or pension under either a statutory pension scheme or a scheme for payment from a superannuation fund approved by the Commissioner pursuant to subsection (2) of Section 44 or an approved retirement scheme approved by the Commissioner pursuant to Section 44a; or
 - (ii) if the individual referred to in sub-paragraph (i) of this paragraph has attained the age of 55 years or is found to be permanently incapacitated as described in paragraph (y) of this section, \$150,000 of his income derived from any of the sources referred to in sub-paragraph (i) aforesaid and from any other source;
- (b) as regards the years 1996 and any subsequent year of assessment, \$150,000 of the income of an individual who has attained the age of 65 years or attains that age at any time during the year of assessment

Provided that nothing in this section shall be construed to exempt, in the hand of the recipients, any payments other than those referred to above made wholly or partly out of the income so exempted."

In their letter of rejection to Allen the Commissioner of Income Tax said *inter alia* -

"The relevant paragraphs in section 12 of the Act are mutually exclusive and so you are entitled to claim under one or the other but not both."

Allen therefore appealed the decision.

The judge hearing the appeal held that -

- (i) section 12 (a) and 12 (b) stand on their own and are not mutually exclusive and persons who qualify under paragraph (a) are entitled to the full exemption granted under that paragraph and upon reaching the age of 65 are also entitled to the further exemption granted by paragraph (b).
- (ii) In arriving at my decision, I am guided by the judgment of Mr. Justice Rowlett in *Cape Brandy Syndicate v C.I.R.* 12 T.C. 366 where he said

"Now of course it is said and urged by Sir William Finlay that in a taxing act clear words are necessary to tax the subject. But it is often endeavoured to give that maxim a wide and fanciful construction. It does not mean that words are to be unduly restricted against the Crown or that there is any discrimination against the Crown in such Acts. It means this, I think, it means that in taxation you have to look simply at what is clearly said. There is no equity about a tax. There is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax."

The Commissioner of Income Tax wishes to appeal this decision.

What is your advice? Give reasons.

QUESTION 7

Your client Bill Bean was appointed an attorney under the following power of attorney -

"POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY given on the 5th day of December One Thousand Nine Hundred and Ninety-Eight **WE JOE AND JUNE BLOGGS** of **99 S.W. Street, Apartment 5, San Juan, Puerto Rico in the Commonwealth of Puerto Rico, Restaurateur and Hotelier respectively**, appoint **BILL BEAN** of **"Sunbeam Cottage", Swan Street, Bayview, Businessman, our Attorney** for and in our name to do and execute all or any of the following acts deeds and things that is to say:

1. To manage our restaurant, business affairs, investments, securities and personal property for the time being in such manner as the Attorney shall think fit and make any payments in connection with our restaurant business affairs, investments, securities and personal property.
2. To lease our apartment located at "Alps Apartments", Bayview, without the furniture therein.
3. To commence carry on or defend all actions and other proceedings touching our property or affairs or any part thereof or touching anything in which we or our property or affairs may be in anywise concerned.
4. To settle compromise or submit to arbitration all accounts claims and disputes between us and any other person or persons.
5. To sell our motor cars by public auction to the highest bidder.
6. To carry into effect and perform all agreements entered into by us with any other person or persons.
7. Generally to act in relation to our property and affairs and to this deed as fully and effectually in all respects as we could do.

AND WE HEREBY UNDERTAKE to ratify everything which our attorney or any substitute or substitutes or agent or agents appointed by him under the power in that

behalf hereinbefore contained shall do or purport to do in virtue of this Power of Attorney."

The instrument was properly executed and registered/recorded.

Bill Bean now seeks your advice with respect to a number of things he proposes to do under the power. He tells you that -

- (i) the restaurant owned by the grantors which is in a busy commercial area and which sells local dishes is losing money. However, an overseas fast foods company is interested in entering into a joint venture with him to operate the restaurant;
- (ii) he has identified a purchaser for both motor cars and wishes to sell them to him;
- (iii) he has identified a lessee for the apartment but has nowhere to store the furniture and therefore proposes selling the furniture.

What is your advice? Give reasons.

QUESTION 8

In April 1996, your client, Penelope Maples, entered into a written hire purchase agreement with respect to a Rover 620 motor car with Tom Thumb, the owner of the car. The period of the agreement was for three years. Under the terms of the agreement Miss Maples was to pay interest at the rate of twelve percent per annum on any sum due and payable by her at the expiration of the three-year period.

In April of this year (1999) at the expiration of the period, there was a sum outstanding payable by your client. She acknowledged the sum due but agreed to pay with interest at the rate of eight percent per annum. Tom Thumb rejected this offer,

however, and referred to the provisions in the agreement with respect to interest which was set at twelve percent.

The basis of this dispute is the Hire Purchase Act 1998 which replaced the earlier Act of 1938. Under the new Act, section 5 provides for a maximum interest rate of eight percent. The Act of 1938 had no provision similar to section 5.

The 1998 Act provides *inter alia* -

- "3. No hire-purchase agreement entered into after the commencement of this Act shall be enforceable unless the agreement containing the particulars required by this section is in writing and is signed personally by the hirer and unless a copy thereof be delivered or sent to the hirer within seven days of the making of the agreement and no such agreement shall be enforceable if it is proved that the agreement was not signed by the hirer before the chattel was delivered to him under the agreement.
4. (1) In respect of every hire-purchase agreement whether entered into before or after the commencement of this Act, the owner shall, on any reasonable demand in writing being made by the hirer at any time during the continuance of the agreement, supply to the hirer a statement signed by the owner or his agent showing -
- (a) the amount of the value of the chattel and, if the chattel was delivered after the commencement of this Act, the date on which the chattel was delivered to the hirer;
 - (b) the amount of any payment already received by the owner in respect of the hiring of the chattel and the date on which it was made;
 - (c) the amount of every sum due to the owner, but unpaid, and the date upon which it became due; and
 - (d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.
- (2) If an owner to whom a demand has been made under this section fails to comply therewith he shall not, no long as the default continues, be entitled to retake the chattel notwithstanding anything to the contrary in the agreement contained.
5. Notwithstanding anything in any hire-purchase agreement contained, the owner of the chattel subject to the agreement shall not be entitled to receive or recover from the hirer in respect of the value of the chattel, the option to purchase and the hiring, any sum in excess of the value of the chattel as specified in the agreement together with interest not exceeding eight per

cent per annum on any sum due and payable by the hirer at the expiration of the period fixed under the agreement for the payment of all instalments. Provided that such interest is payable by the hirer in terms of the agreement".

Miss Maples has now sought your advice. What is your advice? Give reasons.
