

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 2000

LEGAL DRAFTING AND INTERPRETATION

(Friday, May 19, 2000)

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

Avril, who owned and operated a small supermarket, was charged for selling fresh meat without a licence at a place other than a public market. While Avril admitted that she had no licence to sell fresh meat, she contended that she had not sold fresh meat at her supermarket but rather stored frozen meat in a deep freeze in a room at the back of the supermarket. Occasionally, special wholesale customers purchased certain types of frozen meat by requesting it at the counter at least two weeks in advance.

The Public Health Act provides, *inter alia*:

- “2. In this Act –
'fresh meat' means meat of any cattle, sheep, goat, pig or turtle, slaughtered for sale and includes imported fresh meat.
'cold stores' means any premises or place used for keeping and preserving by a refrigerating process any fresh meat, game or fish intended for the food of man.
5. It shall not be lawful for any licensee of any cold stores to sell any fresh meat or fresh fish at or from such cold stores without having first obtained from the Corporation a licence for that purpose.
- 6 The Corporation may grant to any licensee of any cold stores a licence to sell fresh meat or fresh fish at or from any cold stores.
7. Every licence granted under this Act to sell fresh meat or fresh fish at or from any cold stores shall be under the hand of the Town Clerk.

8. Any fresh meat or fresh fish delivered from any cold stores whether such delivery be made in pursuance of a contract of sale or otherwise (except meat or fish delivered at any premises licensed for the sale of meat or fish under this Act or at any public market) shall be deemed to be sold within the meaning of this Act.

9. Every person who shall sell any fresh meat or fresh fish from any cold stores without having first obtained a licence for that purpose from the Corporation shall be liable for such offence to a fine."

Avril has sought your advice.

Advise her. Give reasons.

QUESTION 2

Your client, Mr. Thomas Struggler, owns a computer training school adjacent to a popular private entertainment centre.

Last month a well known dance hall promoter advertised a "dance hall bashment" with a line-up of top-line D.J. artistes including the leading D.Js. Von and Zoom King.

Two Saturdays ago, between 6,000 and 7,000 people attended the show which started at 8.00 p.m. As the evening 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 and when

this demand was refused, chaos followed. Bottles, chairs and other missiles were thrown about. The audio equipment was destroyed and there was general mayhem. In all of this your client's property was also damaged, that is to say, windows and doors to the building as well as most of the computers inside.

At 10.00 p.m. the police were called and within ten minutes they arrived, at which point a Justice of the Peace issued a proclamation in compliance with the Riot Act. At 11.15 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 therefore sought compensation from the Riot Compensation Authority provided for under the Riot Act.

The Riot Compensation Authority found -

- (i) that there was no riot as provided for in the Act as the event occurred on private premises;
- (ii) that the damage done to the building did not satisfy the requirements of Sections 8 and 9; and
- (iii) that the word "machinery" did not indicate computers since the Act was passed in 1857 and could not have contemplated computers, and therefore their destruction would not attract compensation.

Your client now wishes to appeal this decision.

Advise him.

QUESTION 3

Your client, Sion Matthews, a diplomat serving at the High Commission in Ottawa, Canada, but home on leave in April, had applied for a firearm permit to the police officer in charge of the parish of St. Andrew, the parish in which he normally resides when in this country.

Section 6 of the Firearms Act provides -

"An application for the grant of a firearm or shotgun licence shall be made in the prescribed form to the police officer in charge of the parish in which the applicant resides and shall state such particulars as may be required by the form."

Sion owns a house in St. Andrew but he has let it for the duration of his tour of duty overseas.

The Superintendent of Police in charge of St. Andrew, however, refused his application on the ground that he did not reside within the parish. Sion therefore appealed to the Magistrate's Court requesting that the court reverse this decision.

The Magistrate however upheld the refusal of the Superintendent of Police and gave his reason as follows -

"The point which troubled the superintendent and which led him to refuse the application was that in his view Mr. Matthews did not reside in the parish. At the time of the application he had let his house and it must follow that subject to any covenant that there may be in the tenancy permitting the landlord to inspect and make sure that the tenant was not breaking the place up, he had no right to occupation.

It was said by Mr. Matthews that section 6 should receive a wide construction as it has only an administrative purpose, namely to identify the relevant person, to deal with an application.

I think there is force in that submission, but I cannot get away from the fact that the legislature has decided that in general no one shall possess a firearm unless they are authorised in accordance with the procedures laid down by the legislature. The legislature could have said that anybody who has a residential base or anybody who owns property could apply where that property is located, but it did not.

What Mr. Matthews suggested was that 'resides' in this context was the place with which you have a residential connection at the present time or have had such a connection in the past, coupled with an intention to reside at that place in the future. That would certainly get over the problem which affects Mr. Matthews and I am bound to say that I would have liked to assist Mr. Matthews because it seems to me that if the legislature has made it impossible for a diplomat serving overseas to obtain a firearm certificate, it must be because those concerned never applied their minds to the problem, I am sure they would have made provision for it.

I am not averse to applying a broad construction in order to remedy any deficiencies in an Act of Parliament which would be apparent if one applied a narrow construction as proposed by Lord Denning in *Notham v Barnet Council* [1978] 1 WLR 222, but there are limits to that and here I feel bound by the rule *Expressio Unius*".

Mr. Matthews wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 4

Your client Ras Megonan, a dreadlock rastafarian, was charged for driving a motor cycle without wearing a protective helmet, contrary to section 43D of the Road Traffic (Amendment) Act, 1999:-

“43D – (1) Every person shall, at all times while driving, or riding on, a motor cycle, wear a protective helmet of the prescribed shape, quality, construction or standard.”

The facts were that on March 25, 2000 Megonan was seen driving a motor cycle along Mona Road, St. Andrew without wearing the mandatory protective helmet. He was signalled to stop by Constable Cleancut who questioned him as to why he did not have on his helmet. His reply was that his locks was of such a length and thickness as to make it impossible for him to wear the prescribed helmet. And anyway his locks would protect him in the event of an accident. Thereupon he was charged.

At his trial it was submitted by his attorney-at-law who had recently been admitted to practice, that:

- (1) the shape and size of the protective helmets approved by the Minister did not take into account the special needs of certain cyclists such as dreadlock rastafarians; and

- (2) the defendant's human rights had been breached in that as a rastafarian his religious rights protected by the Constitution was being violated. Section 16(1) of the Constitution provides that:-

"Except with his own consent no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religious belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religious belief in worship, teaching, practice and observance."

The Magistrate however found him guilty as charged and stated:-

"As far as I am concerned there is just not any substance at all in your submission. No one is bound to ride a motor cycle. All that the law prescribes is that if you do ride a motor cycle you must wear a crash helmet. The effect of the law no doubt bears on the Rastafarian community in this respect because it means that they will often be prevented from riding a motor cycle not because of the law but by the requirements of their religion.

Further it seems to me that it is quite unarguable that the law requiring the wearing of a crash helmet is unconstitutional having regard to the provisions of sub-section (6) of section 16 which states:-

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent

that the law in question makes provision which is reasonably required:-

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion."

Megonan wishes to appeal this decision and has consulted you.

What is your advice? Give reasons.

QUESTION 5

Recently the government announced the revival of a toll tax system for the use of new highways and bridges. Because of the urgency to collect revenue and strong opposition in Parliament to the proposal, the existing legislation which had been in abeyance for many years would be enforced.

Sections 2 and 3 of the Highway and Bridges Toll Tax Act 1925 provides:-

"2. The relevant authority shall and may as soon as conveniently may be caused to be erected a turnpike gate or gates, toll gate or gates at or upon any highway or bridge.

3. After compliance with section 2 the respective tolls following shall be demanded and taken at the turnpike or toll gate, turnpike or toll gates, to be erected as aforesaid by such person or persons as the said relevant authority shall from time to time appoint before any foot-passenger, or any horse, mule, ass, or other beast, or any coach, waggon, cart, other carriage or any vehicle shall pass or return over the said highway or bridge or through the same, that is to say:-

- (a) for every person on foot and with a wheelbarrow or such like carriage the sum of one dollar;
- (b) for every horse, mule or ass the sum of two dollars;
- (c) for every bull, ox, cow, steer, heifer or calf the sum of two dollars;
- (d) for every sheep or lamb, boar, sow or pig, one dollar;
- (e) for every coach, chariot, hearse or chaise, and for every other carriage hung on springs the sum of one dollar for each wheel and for each horse or other beast of draught drawing the same the sum of one dollar;
- (f) for every wagon, timber carriage, dray, cart or other such like carriage with or without springs the sum of two dollars per wheel and for any horse or other ^beast of draught drawing the same the sum of two dollars." ✓

Two weeks ago a toll gate was erected on the Eastern Highway by the relevant authority and they began charging the prescribed sums.

Last week, an attorney-at-law, Delroy, and a farmer, Wallace, sought to challenge the application of the legislation.

Delroy, while riding his bicycle sought to ride on the Eastern Highway but refused to pay any toll for so doing. He claimed that section 3 did not apply to a cyclist. He was prevented from proceeding.

Later, Wallace on his tractor also refused to pay a toll of eight dollars claimed from him. He argued that section 3 did not apply to tractors. After he threatened to sue the toll gate keeper he was allowed to proceed without paying.

The relevant authority is in a state of consternation, having been advised by their attorney-at-law that all types of conveyances and farm vehicles were covered. They have therefore sought your advice.

What is your advice? Give reasons.

QUESTION 6

In January this year (2000) your client Beaver Stevenson, the landlord of commercial property located on Swan Street, in carrying out his half-yearly inspection of the demised property noticed that parts of the stonework on the front wall of the building was loose and that pieces of the wall at first floor level were falling onto the sidewalk below. He was very concerned that pedestrians could be injured by the falling masonry and by the fact that although there was a full repairing covenant on the part of the tenant, Heart Sisters Ltd., they had not corrected the problem. He therefore served a notice on them requesting that they immediately carry out repairs, otherwise he would forfeit the lease, as there was a proviso to forfeit in the lease.

In adopting this procedure he was satisfied that he had complied with section 14 of the Property Act 1960, which provides:-

"(14) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice:

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (c) in any case, requiring the lessee to make compensation in money for the breach,

and the lessee fails within a reasonable time thereafter to remedy the breach if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the lessor for the breach."

Two weeks later, Heart Sisters Ltd. having failed to carry out any repairs, Stevenson began the necessary repairs which were completed ten days later.

In February, Stevenson submitted the bill for the repairs to the tenants who responded one week later through their attorney-at-law by way of a counter-notice that they were not obliged to make any such payment as they were protected by section 24 of the Landlord and Tenant Act 1938 which provides:-

"24 (1) Where a lessor serves on a lessee, a notice that relates to a breach of a covenant or agreement to keep or put in repair during the currency of the lease all or any of the property comprised in the lease, the lessee may within twenty-eight days from that date serve on the lessor a counter-notice to the effect that he claims the benefit of this Act.

(2) A right to damages for a breach of such a covenant as aforesaid shall not be enforceable by action commenced at any time unless the lessor has served on the lessee not less than one month before the commencement of the action such a notice as is specified in subsection (1) and where a notice is served under this subsection, the lessee may, within twenty-eight days from the date of the service thereof, serve on the lessor a counter-notice to the effect that he claims the benefit of this Act.

(3) Where a counter-notice is served by a lessee under this section, then, no proceedings by action or otherwise, shall be taken by the lessor for the enforcement of any right of re-entry or forfeiture under any proviso or stipulation in the lease for breach of the covenant or agreement in question, or for damages for breach thereof, otherwise than with the leave of the court.

(4) A notice served under subsection (1) in the circumstances specified in subsection (1) shall not be valid unless it contains a statement, in characters not less conspicuous than those used in any other part of the notice, to the effect that the lessee is entitled under this Act to serve on the lessor a counter-notice claiming the benefit of this Act, and a statement in the like characters specifying the time within which, and the manner in which, under this Act a counter-notice may be served and specifying the name and address for service of the lessor."

Stevenson now wishes to know what are his rights in the circumstances.

Advise him. Give reasons.

QUESTION 7

Miss Melrose Richards recently came to see you. She tells you that two years ago she began subscribing to cable television and has been paying monthly rental charges ever since.

On April 5, 2000, the Consumption Tax Act was amended to provide for a special tax on cable television subscribers, which was 2½% more than the established tax rate. On May 1, 2000, she received her usual bill from her cable supplier which includes a sum representing twenty-five months outstanding special tax payments.

She immediately contacted the supplier who subsequently informed her that they were bound by the provisions of the Consumption Tax (Amendment) Act 2000 and in particular section 5. That section provides as follows:-

"5 Where services are supplied for any period for a consideration the whole or part of which is determined or payable periodically, the services shall be treated as being successively supplied for successive parts of the period and each of the successive supplies shall be treated as taking place when a payment is received or a tax invoice relating to the supply is issued by the supplier whichever is the earlier."

Miss Richards refused to pay the outstanding sum and offered to pay the usual monthly rental. The supplier however refused to accept this sum and has disconnected her supply.

Miss Richards has therefore sought your advice.

What is your advice? Give reasons.

QUESTION 8

Mary Souza, mother of Dorothy Souza who resides in New York, has come to see you with respect to the sale of her daughter's house at Queen Gardens and the letting of her beach cottage at Sea Sand Villas.

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.

A

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I Dorothy Souza, 48 Linden Blvd., Apt 7, Brooklyn, N.Y. 11203
(insert name and address of the principal)
do hereby appoint Mrs. Mary Souza, 1 Marine Terrace, Kingston 17, Harbour View, Jamaica, W.I.
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

(Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (L), inclusive, shall automatically constitute an elimination also of subdivision (M).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

- (A) real estate transactions;..... []
- ~~(B) * chattel and goods transactions * * * * *~~ [D S]
- ~~(C) * bonds, shares and other securities transactions * * * * *~~ [D S]
- ~~(D) * banking transactions * * * * *~~ [D S]
- ~~(E) * business operating transactions * * * * *~~ [D S]
- ~~(F) * insurance transactions * * * * *~~ [D S]
- ~~(G) * estate transactions * * * * *~~ [D S]
- ~~(H) * probate and executorship * * * * *~~ [D S]
- ~~(I) * personal relationships and affairs * * * * *~~ [D S]
- ~~(J) * domestic or non-domestic services * * * * *~~ [D S]
- ~~(K) * records reports and statements * * * * *~~ [D S]
- ~~(L) * full and unqualified authority to my agent or agents to act or delegate any or all of the foregoing powers to any person or persons whom my attorney(s) in fact shall select * * * * *~~ [D S]
- ~~(M) * all other matters * * * * *~~ [D S]

This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, I have hereunto signed my name and affixed my seal this 16th day of May, 1990. Dorothy Souza (Seal) (Signature of Principal)

STATE OF NEW YORK COUNTY OF KINGS ss.: On the 16th day of May 1990 before me personally came Ms. DOROTHY DeSOUZA

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and she acknowledged to me that she executed the same.

HAROLD S. JONES Notary Public, State of New York No. 24-G1JO469400 Qualified in Kings County Commission Expires March 30, 2000

DOROTHY SOUZA TO MRS. MARY SOUZA

Power of Attorney Statutory Short Form

Dated, May 16, 1990