

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2004**

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 28, 2004)

Instructions to Students

- (a) Time: **3 ½ 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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Your client, Ravi King, is the proprietor of the "Hibiscus Inn". Late last month John Smoothman, a salesman with Exhotic Perfumes and his wife checked into the Inn for a three-day stay. He had in his possession a large number of bottles of very expensive perfume, which were to be supplied to the Green Bottle Duty Free Shop. Unknown to John, however, the Green Bottle Duty Free Shop had gone out of business two weeks earlier.

Nevertheless, because his wife was with him he decided to remain at the Inn as planned. At the end of the period he requested his bill for room and for food and liquor which they had consumed during their stay. Having got the bill he submitted his Diamond Sharp Credit Card which was declined. Checks with the card centre indicated that he had no credit on the card.

At this point Ravi immediately instructed a security guard to clamp Smoothman's BMW and to seize the bottles of perfume as well as his baggage and that of his wife's.

Smoothman then challenged Ravi's right to seize the BMW which is the property of Exhotic Perfumes, the bottles of perfume and the baggage of his wife. Ravi, however, brought to his attention sections 2 and 3 of the HotelKeepers Act. Ravi nevertheless, out of an abundance of caution, seeks your advice as to the legality of his action.

Sections 2 and 3 provide as follows –

"LIEN OF HOTEL OR BOARDING HOUSE KEEPER

2. Any hotel, boarding or lodging house keeper may seize and detain in his hotel, house, or on his premises, and before the same shall have been

removed therefrom, the trunks and personal property of any person who is indebted to him for board and lodging and shall be responsible for the safe keeping of the same; and in addition to all remedies provided by law he shall have the right in case the charges remain unpaid for three months after the seizure thereof to sell by auction the baggage and property of such guest, boarder or lodger, so seized, on posting and keeping posted during the period of one week on the outside of the door of such hotel, boarding or lodging house a notice of such intended sale, stating the name of the guest, boarder or lodger, the amount of his indebtedness, a description of the baggage or other property to be sold, the time and place of sale, and the name of the auctioneer, and after such sale, such inn, hotel, boarding or lodging house keeper may apply the proceeds of such sale in payment of the amount due to him as aforesaid and the costs of such advertising and sale; and he shall pay over the surplus if any to the person entitled thereto on application being made by him therefor and in case application therefor be not forthwith made he shall immediately pay the same to the Clerk of Courts, to be kept by him for such owner for one year; after which time if such owner has not previously claimed the amount so kept the same shall form part of the general revenue fund.

3. No hotel, boarding or lodging house keeper shall have a right to detain the trunks or personal property of any one, or to have a lien thereon, for wines or spirituous or fermented liquors supplied to him or to any one else by his order."

Advise Ravi? Give reasons.

QUESTION 2

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

The evidence at the trial was that on the night of December 14, 2003, Bombastic attacked the Parliament building with a device called a "molotov cocktail". He also painted on one of the walls "down with the Queen". There were a number of eyewitnesses who identified him at the time of the bombing. In addition, forensic experts found his fingerprints on fragments of the bottle used to make the molotov cocktail.

At the end of the trial, the judge found Bombastic not guilty and said that not only was section 2 not the appropriate section but it was manifestly absurd that in 2003 such a section could still be in the laws of an independent 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 or 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-General 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-General 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/Attorney General, would you appeal this decision (assume it is a procedure permitted in your jurisdiction)? Give reasons.

QUESTION 3

The Executors of the estate of Shogan Nippon have sought your advice. They show you a Will and request that you advise them as to the effect of clauses 2, 4, 6 and 7 of the Will. The Will had been drafted by the testator without any legal assistance.

The Will states as follows –

“This is the last Will and testament of me Shogan Nippon of Town View Estates.

First. All my just debts and funeral expenses shall be fully paid.

Second. I give and bequeath to my beloved sons, Volney and Winston and my beloved daughters Flo and Jean and my grandson Harvey all my lands known as Top Ground (100 acres) and View Point (800 acres) but they are not to be divided or sold except all the children concerned are in full agreement.

Third. To the above-named sons, daughters and grandson I give and bequeath all my livestock and cattle to share and share alike.

Fourth. I will and bequeath to my grandchildren Mary, Mark and Justin all my land situated on Booky Point.

Fifth. The balance of my account in the National Bank, the balance of my investments with the North American Insurance Company together with interest thereon I give and bequeath to my sons Volney and Winston and my daughters Flo and Jean to share and share alike.

Sixth. I give and bequeath to my sons Volney and Winston and my daughters Flo and Jean and my grandson Harvey my salt pond and factory at Sandy Point to share and share alike or to be worked together unshared whichever they desire.

Seven. I give and bequeath to my sons Volney and Winston and my grandson Harvey my house and yard and all my household effects, but my wife is to be allowed to live in the house as long as she lives."

The Will was properly executed and witnessed.

Advise the executors giving reasons.

QUESTION 4

Tranquility Funeral Directors (T.F.D.) own a crematorium which includes a memorial garden, a chapel and cloisters and a furnace chamber and chimney tower. The last two were built in 2003. In the tower and chamber human bodies are reduced to ashes and are then disposed of in accordance with the instructions of the deceased or his representatives. Sometimes the ashes are

scattered, sometimes handed to the deceased's family and sometimes put into caskets to be placed in the memorial garden.

For the financial year 2003-2004 T.F.D. sought a tax exemption under Section 65 of the Income Tax Act for the money expended for the construction of the furnace and chimney tower.

Section 65 states as follows –

“(1) A taxpayer is entitled to a tax exemption on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade carried on by him.

(2) Subject to the provisions of this section “industrial building or structure” means a building or structure in use for the purposes of a trade which consists in the manufacture of goods or material or subjection of goods or materials to any process.”

T.F.D.'s application was, however, rejected by the Commissioner of Income Tax who wrote to them as follows –

“In my opinion your claim does not fall within the provisions of section 65 of the Income Tax Act. Your trade as I understand it consists of all those services and facilities which enable the obsequies of the human being to be carried out with that reverence and decorum which is demanded by a civilized society. My mind recoils by the description of the bodies of the dead as goods and materials as well as the idea that what is done in the crematorium is a process.”

T.F.D. has come to see you with a view to appealing the decision of the Commissioner of Income Tax.

What is your advice? Give reasons.

QUESTION 5

Your client Dr. Tony Young, Phd., has just been convicted of murder. He has dismissed his trial attorney-at-law because of what he says was his incompetence, and has retained you.

He is of the view that he was not afforded a fair hearing by an independent and impartial court established by law, in accordance with the provisions of the Criminal Procedure Act 1972 and the Oaths Act 1963 in that the jurors were allowed to separate each day without taking an oath and were not sequestered until the conclusion of the trial. He rejected his attorneys' opinion that the provisions of those statutes had to be read in light of Section 6 (1) of the Jury Act 1998.

Section 59 of the Criminal Procedure Act provides as follows –

“(l) When any accused is given in charge of the jury that trial shall proceed continuously. Upon any adjournment the court may in all cases, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for preventing them from holding communication with anyone on the subject of the trial. Such direction shall be given in all cases in which the accused might, upon conviction, be sentenced to death.

(2) In all cases which are not capital, the jurors may be permitted to separate upon adjournment of the court: Provided that in a trial where the charge is one of felony no juror shall be allowed to depart from the court unless and until he has taken the special oath in that behalf prescribed by subsection (3) of section 13 of the Oaths Act".

Section 13(3) of the Oaths Act is as follows –

"(3) Whenever upon the trial of a criminal case not capital in which the charge is one of felony the judge shall decide to permit the jury trying such case to depart from the court any adjournment of such trial, such jurors shall not be permitted so to depart from the court until they shall have first taken in open court the following oath to be administered to such jurors by the Registrar of the Supreme Court:

You swear that during any adjournment of the trial of the issue joined between Our Sovereign Lady the Queen (or as the case may be) and the prisoner at the bar which you and your fellows are empanelled and sworn to try, you will not whilst separated, or until you shall be again assembled in court, speak with or listen to, or hold any communication with any person whomsoever other than your fellows empanelled with you touching the said issue, or any matter relative to the trial thereof; And that upon the termination of every adjournment thereof you will again come into this court. So help you God."

Section 6 (1) of the Jury Act is as follows –

"(1) In every case on the criminal side of the court and in every case triable by jury, the judge may, if he thinks fit, permit jurors

sworn and empanelled upon the trial thereof to separate and depart from the court during any adjournment of such trial before they have retired to consider their verdict."

Dr. Young wishes to appeal. Advise him giving reasons.

QUESTION 6

Ruddy Rose, was charged and convicted for an offence committed under the Vagrancy Act –

"that on Tuesday, March 21, 2004, 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 Sergeant Strict, in company with others, was on patrol in the vicinity of Queen Street and Broad Street (a commercial area) on March 21, 2004 at about 6:00 a.m. He saw four men in front of him and each appeared to have bottles in their back pockets. Sergeant Strict called to the four men who looked in his direction and ran. He pursued Rose and held him and took from his right back pocket a clear half pint bottle containing liquid, pebbles and broken glass. It was stopped with a paper stopper. As he held Rose, Rose said "Is Bobby give me to throw on a house."

Sergeant Strict then cautioned Rose and charged him for being armed with an offensive weapon.

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 Rose (who did not give evidence at his trial), his attorneys-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 –
 - (I) 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 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.
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, sword, cutlass, razor, bludgeon, or other offensive weapon or instrument as aforesaid shall, on the conviction of the offender, be forfeited to Her Majesty."

Rose wishes to appeal this decision and has now sought your advice.

What is your advice? Give reasons.

QUESTION 7

In a standard form Hire Purchase Agreement used by Simple Sales, a client of your firm, written warranty is defined as follows:

"In this Agreement, "written warranty" means any written affirmation of facts made and /or promise made in connection with the sale of a product by the Seller to a Buyer which relates to the nature of the material or workmanship and affirms or promises that such aforesaid material or workmanship is defect free or will meet a specified level of performance over a specified period of time. Provided also that written warranty shall mean any undertaking in writing in connection with the sale by a Vendor of a product to refund, repair, replace a product or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the aforesaid undertaking."

Tom Jones, an associate in your firm and a recent law school graduate redrafted that provision as follows:

"The term written warranty means-

- (1) any written affirmation of fact or written promise which is
 - (a) made in connection with the sale of a product by the Seller to a Buyer;
 - (b) relates to the nature of the material or workmanship;
and
 - (c) affirms or promises that the material or workmanship
 - (i) is defect free; or
 - (ii) will meet a specified level of performance over a specified period of time; or
- (2) any written undertaking made in connection with the sale of a product by the Vendor to
 - (a) refund;

- (b) repair; or
- (c) take other remedial action with respect to such product, if the product fails to meet the specifications set out therein."

- (i) Comment on the adequacy or otherwise of the redraft.
- (ii) Identify any ambiguity that arises in the provision as originally drafted.

QUESTION 8

In February 2001, Sheila was a passenger in a car that was being driven by her husband, Bob, when the car was involved in an accident caused by Bob's negligence. As a result of the accident, Sheila suffered serious injuries.

At the time of the accident section 15 of the Married Women's Property Act provided:

"15. Every married woman has in her own name against all persons, including her husband, the same remedies for the protection and security of her own separate property except that no husband or wife is entitled to sue the other for a tort."

In April 2001, the Family Law Reform Act repealed section 15 of the Married Woman's Property Act and provided in section 6 that:

"6. Each of the parties to a marriage has the like right of action in tort against the other as if they were not married."

Sheila and Bob were divorced in December 2002. In November 2003, Sheila brought an action against Bob to recover damages for the injuries she sustained from the accident. Bob has consulted you.

Advise Bob as regards the application of the Family Law Reform Act to Sheila's action.
