

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2009

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 29, 2009)

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

In January this year (2009), Aston Jones entered into a lease for one year, with Barry Brick, for his (Brick's) Toyota car. The terms of the lease were as follows:

*“Mr. Aston Jones  
23 Princess Drive  
St. Thomas*

*Dear Sir*

*I agree to let my 2006 Toyota Camry motor car (2 litre) to you on the terms set out herein:*

- 1. You are to pay a monthly rental of \$10,000.*
- 2. You are to licence the car and to keep it in a good state of repair.*
- 3. You are not to create any charges, encumbrances or possessory liens against the said car.*
- 4. This agreement may be terminated by either of us giving 30 days notice in writing to the other party.”*

Both parties executed the agreement on January 11, 2009.

On May 2, this year (2009) Jones took the car to Reliable Repairs for four tyres to be fitted at a cost of \$25,000.

While fitting the tyres the mechanic at Reliable Repairs observed that the brake pads were worn and therefore replaced all four of them at a cost of \$10,000, plus labour of \$5,000.

When Jones went back to collect the car later that day, he was presented with a bill of \$40,000 which he refused to pay.

Reliable Repairs who still have the car in their possession now wish to sell the car under the provision of the Tradesmen Lien Act which states as follows –

*“AN ACT RESPECTING LIENS IN FAVOUR OF TRADESMEN*

*1. Every tradesman or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to all other remedies provided by law, to sell the chattel or thing in respect of which lien exists, on giving one month’s notice by advertisement in a newspaper published in the locality in which the work was done, or in case there is no newspaper published in such locality, or within ten miles of the place where the work was done, then by posting up not less than five notices in the most public places within the locality for one month, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the residence or last known place of residence, if any, of the owner as the case may be, or by mailing the same to him by registered letter if his address be known.*

2. *Such tradesman or other person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto.”*

Advise Reliable Repairs. Give reasons.

---

## **QUESTION 2**

One night recently, neighbours heard Brillo and Suzie engaged in an altercation in Suzie’s house. He threatened to murder her and she threatened to stab him and then dismember him. He was then seen running away from the house in a rage. One hour later screams were heard coming from Suzie’s house and Brillo was seen standing on the ground outside an open window of the house with his hands inside. Neighbours who saw the incident from an upstairs window next door, said that Brillo had been choking Suzie while she sat on a chair in front of the window. Brillo was subsequently charged for an offence under Section 19 of the Larceny Act, to wit, being found by night in a building, namely Suzie’s house, with intent to commit a felony therein, namely to do grievous bodily harm to Suzie.

Section 19 provides –

*“19. Every person who shall be found by night in any building with intent to commit felony therein shall be guilty of misdemeanour and sentenced to two years imprisonment.”*

The judge in handing down judgment said –

*“It was submitted on behalf of the accused that for him to be guilty of the offence it had to be committed while his entire body was inside. But I cannot agree. It would be absurd to think that the accused should get away having attempted to commit murder and having committed serious bodily harm. And I have good authorities for this. Lord Blackburn in River Wear Commissions v Adamson stated that a court should interpret an Act so as to avoid a result which was manifestly absurd, and Lord Denning in Northman v Barnet London Borough Council said: ‘Faced with glaring injustice, the judges are, it is said, impotent, incapable and sterile. Not so with us in this Court. The literal method is now completely out of date.’ ”*

Brillo was found guilty as charged and sentenced to two years imprisonment. He has sought your opinion as to whether he should appeal the conviction.

Advise Brillo. Give reasons.

---

### **QUESTION 3**

In 2006, the Embryology Act was passed to control the creation of human embryos outside the body (*in vitro*) by means of a regulatory authority.

In 2008, a group of scientists (CLONERS) engaged in research with respect to human cloning and the use of embryos for research, sought by way of judicial review, a declaration that organisms created by cell nuclear replacement were not embryos

within the provisions of the Act and therefore not subject to the control of the regulatory authority.

The Long Title to the Act and the relevant provisions are as follows –

*“An Act to make provision in respect of human embryos and any subsequent development of such embryos; to prohibit certain practices in connection with embryos and gametes; to establish an Embryology Authority.*

1. (1) *In this Act – (a) embryo means a live human embryo where fertilization is complete, and (b) references to an embryo include an egg in the process of fertilisation and, for this purpose, fertilisation is not complete until the appearance of a two cell zygote.*

(2) *This Act, so far as it governs bringing about the creation of an embryo, applies only to bringing about the creation of an embryo outside the human body ...*

3. (1) *No person shall – (a) bring about the creation of an embryo, or (b) keep or use an embryo, except in pursuance of a licence.*

(2) *No person shall place in a woman – (a) a live embryo other than a human embryo, or (b) any live gametes other than human gametes.”*

The judge, Mr. Justice Bright, granted the declaration and rejected the submission by the Attorney General that the words “if it is produced by fertilisation” should be

inserted in the definition of embryo where if it is produced by fertilisation, fertilisation is complete". By doing this the Attorney General had submitted, that one would give effect to the legislative policy to bring the creation and use of embryos produced *in vitro*, under strict regulatory control for ethical reasons.

Mr. Justice Bright said, however,

*"I decline any invitation to attempt to rewrite any of the sections of the 2006 Act to make them apply by analogy to organisms produced by cell nuclear replacement. Further the question is whether to insert the additional words is permissible. With reluctance I have come to the conclusion that to insert these words would involve an impermissible rewriting and extension of the definition."*

The Attorney General in turn appealed the judgment on the following grounds –

1. unforeseen scientific developments can carry with them the necessity to strain statutory language;
2. the purpose of the legislation is of prime importance.

The Court of Appeal accepted these submissions and Mr. Justice Dull said *inter alia* –

*"It was essential to give the definition of "embryo" in section 1(1) a purposive construction so that an organism created by cell nuclear replacement came within the definition and a regulatory regime which excluded such an organism was contrary to the policy. That the questions to be asked were whether or not an organism fell within the terms covered by the legislation and whether the clear purpose of the legislation would be defeated if the definition was not extended. Embryos created by fertilisation and by cell nuclear replacement were essentially*

*identical in structure and both shared the capacity to develop into a human being.”*

CLONERS wishes to appeal the decision of the Court of Appeal and has sought your advice as to whether they should do so.

What is your advice? Give reasons.

---

#### **QUESTION 4**

John Dacosa, who was a cabinet maker, died in January 2008. He personally made his Will in 2005 which provided as follows –

*“I give and bequeath to my wife Lucy my property at 25 Queen Street in fee simple.*

*I give and bequeath to my said wife all my woodwork and woodwork machinery which I own at the time of my demise and all my other personal effects.*

*I give to my said wife whatever money I may have in the National Bank.*

*I direct my said Executor, my wife Lucy, that in the event of her selling the property at 25 Queen Street she must give to my grandchildren by my daughter Ann Marie ONE QUARTER of the proceeds from such sale after expenses have been paid.*



*I direct that after my decease and in the event of the decease of my wife before the property mentioned above is sold the said property shall revert to my grandchildren by my daughter Ann Marie.”*

In July 2008, the Will was proved and probate granted to Lucy. She subsequently sought from the court a determination as to whether “...upon the true construction of the Will the property at 25 Queen Street was given to her absolutely or as a tenant for life remainder to the grandchildren.”

The judge at first instance held –

*“That the gift to the wife was a gift of a life interest with the power of disposal by sale during her lifetime and thereafter to John Dacosa’s grandchildren.”*

Lucy is unhappy with the judgment and wishes to appeal it.

Advise Lucy. Give reasons.

---

## **QUESTION 5**

Serenity Undertakers 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 2007. 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 2007-2008, Serenity 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 materials or subjection of goods or materials to any process.”*

Serenity’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 from 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.”*

Serenity has sought your advice with a view to appealing the decision of the Commissioner of Income Tax.

What is your advice? Give reasons.

---

## QUESTION 6

In December 1997, Victor Vincent subscribed to his employer, Tardom Ltd's group life insurance policy and named his wife, Wendy Vincent as beneficiary.

In 2005, however, Victor revoked the benefit to Wendy and instead named his sister, Imogene, as his beneficiary.

Last year (2008), Victor died but his by then estranged wife, Wendy, asked the court to declare that she was entitled to the money payable under the group life insurance policy because the 2005 revocation was invalid as it was contrary to the Family Life Insurance Act 1964.

On the other hand Victor's sister, Imogene, claimed the proceeds by virtue of the Insurance Act 1980.

The Family Life Insurance Act provides as follows –

*“2. Nothing contained in this Act shall be held or construed to restrict or interfere with any right otherwise allowed by law to any person to affect or transfer a policy for the benefit of a wife or children, nor shall it apply to insurance made in favor of or transferred to any wife under a marriage contract.*

*3. A husband may insure his life, or appropriate any policy of insurance held by himself on his life, for the benefit and advantage of, -*

- (a) His wife; or*
- (b) His wife and their children generally; or*
- (c) His wife and his, her and their child generally; or*
- (d) His wife and his or her children generally; or*

(e) *His wife and one or more of his, her or their children.*

4. *A father or mother may insure his or her life or appropriate any policy of insurance held on himself on his life, or by herself on her life, for the benefit and advantage of his or of her child or of one or more of them.*

5. *The insurance mentioned in section 3 or 4 may be effected, either for the whole life of the person whose life is insured, or for any definite period; and the sum insured may be made payable upon the death of such person or upon his or her surviving a specified period of not less than two years.*

6. *Any person who has effected an insurance or who has appropriated a policy of insurance for the benefit of a wife or of a wife and child or children, or of a child or children, at any time and from time to time thereafter, may revoke the benefit conferred by such insurance or appropriation, either as to one or more or as to all of the persons intended to be benefitted, and may declare in the revocation that the policy shall be for the benefit of such other persons provided for in this Act.”*

Section 50 of the Insurance Act provides as follows –

*“Notwithstanding the provisions in any contract of life insurance with respect to the designation of a beneficiary, an insured person may revoke at anytime such designation either by naming any person as a new beneficiary or appointing his estate as his beneficiary.”*

The court awarded the proceeds of the policy to Imogene by virtue of section 50 of the Insurance Act. Wendy now wishes to appeal this decision and has sought your advice.

Advise Wendy. Give reasons.

---

### **QUESTION 7**

Your client, Hard Knocks, has been appointed an attorney under the following power of attorney –

#### *“POWER OF ATTORNEY*

***BY THIS POWER OF ATTORNEY given on the 5<sup>th</sup> day of December Two Thousand and Eight WE SAMUEL AND SAMYNTHA BOTTOM of Tulip Place, Apartment 15, St. Thomas, US Virgin Islands, Restaurateur and Hotelier respectively, appoint HARD KNOCKS of “Moonbeam Villa”, Swan Street, Bayview, Chef, 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 by virtue of this Power of Attorney.”*

The instrument was properly executed and registered/recorded.

Knocks 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 food 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 by private sale;
- (iii) he has identified a lessee for the apartment but has nowhere to store the furniture and therefore proposes selling the furniture;

(iv) he wishes to operate the grantors' bank account at First Bank.

What is your advice? Give reasons.

---

### **QUESTION 8**

Chad Brown was charged on July 21, 2007 with the murder of Tom Lawson, and an information/complaint laid on the same day. Tom Lawson died on July 1, 2007, after he sustained fatal injuries at the hand of Brown.

The evidence before the court was that on the early morning of July 1, 2007, Brown and Lawson were involved in an altercation outside a night club. Provocative words were used by Lawson to Brown who reacted by hitting Lawson on the head with a baton. Lawson then fell to the ground and bled through his eyes, nose and mouth. He was taken to the hospital where he was pronounced dead on arrival.

Committal proceedings for murder commenced on August 15, 2007 and on September 10, 2007, Brown was committed to stand trial for the lesser offence of manslaughter.

The trial commenced on March 1, 2009, and on March 27, 2009, the judge withdrew the case from the jury as a result of evidence given by the pathologist as to the cause of death and directed a verdict of acquittal.

On September 1, 2007, by virtue of the Supreme Court of Judicature (Amendment) Act, sections 55E and 55F were inserted into the Supreme Court of Judicature Act, which for the first time gave the Director of Public Prosecutions (DPP) a right of appeal.

The Supreme Court of Judicature (Amendment) Act 2007 provided as follows –

*“The Supreme Court of Judicature Act is amended by inserting after Section 55D the following as Sections 55E and 55F –*

*55E. The Director of Public Prosecutions may appeal to the Court of Appeal against a judgment or verdict of acquittal of a trial court in proceedings by indictment when the judgment or verdict is the result of a decision by the trial judge to uphold a no case submission or withdraw the case from the jury on any ground of appeal that the decision of the trial judge is erroneous in point of law.*

*55F. On appeal from an acquittal the Court of Appeal may-*  
*(a) dismiss the appeal; or*  
*(b) allow the appeal, set aside the verdict and order a new trial.”*

The DPP, pursuant to the amended provisions in the Supreme Court of Judicature Act, wishes to appeal against the decision of the trial judge. He has therefore sought your advice as an attorney-at-law in his chambers as to the relevant date in determining whether the 2007 amendment applies to his right of appeal.

Advise the DPP. Give reasons.

---