

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2011

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 27, 2011)

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**

Wallis was arrested by Constable Bow by virtue of section 20(2) of the Summary Offences Act which provides that –

*“Any constable on duty must take into custody any person who within his view commits any such offence as is specified in subsection (1).”*

Section 20(1) lists a number of street offences for which a person may be liable.

Section 12 of the same Act provides that neglect by a constable on duty under section 20(2) is a criminal offence.

Wallis was charged with a street offence under section 20(1) and also for assaulting a police constable in the execution of his duty. She was acquitted of the street offence but convicted of the assault. She now challenges this conviction on the basis that the arrest was unlawful under section 20(2) since she had not in fact committed a street offence in relation to which the duty of arrest arose.

The prosecution is concerned about the interpretation to be given to section 20(2) since it could result in problems in police officers carrying out their functions.

Advise the prosecution.

---

## **QUESTION 2**

On October 5, 2009, a tanker belonging to the Scud Oil Company Limited (the Company) collided with a motor cycle driven by Sofia. Sofia was injured as was the pillion

passenger, Tanya. As the Company was a public authority and the tanker was being operated in the course of the Company's duties at the time of the accident, the Public Authorities Protection Act applied. Section 2(1) of the Act provided as follows:

*"2(1) Where any action, prosecution, or other proceeding, is commenced against any person for any act done in pursuance, or execution, or intended execution, of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty, or authority, the following provisions shall have effect-*

- (a) the action, prosecution, or proceeding, shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof;*
  
- (b) wherever in any such action judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client."*

In the circumstances, therefore, Sofia and Tanya had to bring an action by April 4, 2010. They did not seek legal advice, however, until March of 2011, and their attorneys-at-law did not appreciate that the Company was a public authority and so no proceedings were instituted before the expiration of the limitation period.

On May 1, of this year (2011), section 2(1) of the Act was amended by extending the limitation period from six months to six years.

Sofia and Tanya have sought your advice as to whether they can now bring an action against the Company.

What is your advice? Give reasons.

---

### **QUESTION 3**

The accused, Topsy Rumbola, was charged that he unlawfully had liquor in a vehicle contrary to section 5 of the Drug and Liquor Control Act.

The evidence before the Magistrate disclosed that on November 15, 2010, at about 7:00 p.m., on his way home to dinner, Rumbola who was a taxi driver, drove to the supermarket in his taxi and purchased liquor which he placed in his taxi for the purpose of driving to his home and leaving the liquor there. He had no passengers in the vehicle.

Before he reached home he was stopped by the police in a road block and the liquor was found in the taxi, and the charge referred to above was laid.

The taxi is a vehicle defined in the Vehicles Act, and the accused's home is a place where liquor may be lawfully consumed.

Section 5 of the Drug and Liquor Control Act states –

*“(1) Subject to subsection (2) ... no person by himself, his servant or agent shall have or keep or consume or give liquor in a vehicle as defined in The Vehicles Act.*

*(2) Subsection (1) does not render it unlawful to have liquor in such a vehicle for the purpose of transporting the liquor from the store or from the outlet ... at which it was purchased to a place where it may be lawfully had or kept or consumed or from such a place to another place where liquor may be lawfully had or kept or consumed.*

*(3) Subsection (2) does not apply with respect to liquor being transported in a vehicle used for carrying passengers for hire or gain unless the liquor is in the possession of a person who is a bona fide passenger in the vehicle.”*

The Magistrate found Rumbola not guilty and stated that in interpreting section 5(3), he was of the view that the word “while” had been omitted from the second line of that subsection and that it should be inserted between the words “vehicle” and “used”. To do otherwise, he said, would be to produce an absurd result.

He further cited as authority for this approach the dictum of Lord Denning in *Notham v Barret Council* [1978] 1 WLR 220, 223 where he 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. It has been replaced by the approach which Lord Diplock described as the ‘purposive approach’.”*

As Director of Public Prosecutions, would you appeal this decision? (Assuming for purposes of this question that the Director of Public Prosecutions has a right of appeal). Give reasons.

#### **QUESTION 4**

John Snow, a barber and hairdresser, carried on his business in a room attached to his house where customers came and were shaved or had their hair cut, paying for the service provided. He employed a young assistant who assisted him in shaving customers. John Snow carried on no other business and no articles were bought or sold on the premises.

On Sunday, February 22, 2009, John Snow shaved and cut the hair of several customers, for reward, as he had done almost every Sunday for the last twenty years. On this Sunday, however, he was charged with carrying on the trade of barbering and hairdressing upon the Lord's Day, contrary to section 2 of the Sunday Observance Act.

Section 2 provides as follows –

*“No tradesman, craftsman, workman, labourer or other person shall do or exercise any worldly labour, business or work of their ordinary callings upon the Lord's Day or any part thereof (works of necessity and charity only excepted) and that every person so offending shall for every such offence forfeit the sum of One Thousand Dollars.”*

Before the court it was submitted on behalf of the prosecution that John Snow's activities came within the words of the section. The section was intended to strike at persons exercising “handy labour” on Sunday, and that John Snow did work with his hands in shaving and cutting the hair of his customers. Further, a barber is a tradesman. He carries on the trade of shaving and haircutting in the same way as a carpenter or a smith carries on the trade of carpentering or shoeing horses.

For the defence it was submitted that John Snow is not a tradesman, craftsman, workman or labourer or other person within the meaning of the section. He is not a tradesman because that word is used in the ordinary sense of a person who buys and sells. A barber is not a craftsman which denotes a skilled workman who makes something. He is not a workman or labourer because those words are intended to cover persons in the employment of others. Finally, he does not come within the words “or other person” since those words ought to be restricted to those previously specified.

John Snow was found guilty and fined \$1,000. He wishes to appeal this decision and has sought your advice.

Advise him. Give reasons.

---

### **QUESTION 5**

Section 10 of the Transport Act provides as follows –

*“Any person found sleeping in a bus station is liable on summary conviction to a fine of one hundred dollars.”*

Traveller and Vagrant were arrested at 5:30 a.m. for sleeping in a bus station.

Traveller was waiting for a bus which was delayed. When he was arrested he was found sitting on a bench in an upright position and was heard to be snoring.

Vagrant was a well-known tramp who was sleeping on a bench with his hand resting on a pillow and was covered with a blanket. The pillow and blanket were the belongings of Vagrant.

Advise as to the criminal liability of Traveller and Vagrant, giving reasons.

---

### **QUESTION 6**

You have been approached by Mr. Geoff Carson, a public officer against whom allegations of breaches of discipline have been made.

Under the Public Service Regulations, it is set out as follows in Regulation 90 –

*“(1) Where a report of indiscipline or misconduct by an officer is received, the Permanent Secretary or Head of Department shall report the matter to the Public Service Commission, which shall inform the officer of the report and shall concurrently appoint an investigating officer to investigate the report.*

*(2) The investigating officer shall, within three days of being appointed, give the officer and any other person named in the original report a notice requiring him and that person within seven days to give a written explanation regarding the events based on which the report of indiscipline or misconduct has been made.*



*(3) The investigating officer shall, within twenty one days of receiving the written explanations, furnish a report to the Commission, which shall then consider the case and give its decision.”*

Mr. Carson has advised you that the investigating officer took seven days from being appointed to seek a written explanation from him, and while in the spirit of co-operation he furnished his explanation the day after being requested to do so, he further notes that thirty days have passed since he submitted his explanation, and no report has been furnished to the Commission.

He is of the view that the disciplinary proceedings should not continue in view of the failure by the investigating officer to observe the time limits stipulated in the Regulations and that, if necessary, court proceedings should be sought to prevent the disciplinary proceedings from continuing.

Advise Mr. Carson as to the feasibility of his proposal.

---

## **QUESTION 7**

Mary owns, *inter alia*, two properties – one at Westmoorings (the Westmoorings property) and the other at Gulf View (the Gulf View property). She personally made a Will in which she has left both properties to –

*“my wonderful granddaughter Ann and her heirs; but in case she dies under age eighteen and without children, I leave the Westmoorings property to my grandson Roger (Ann’s cousin); but in case he dies under*

*age eighteen and without children the last mentioned premises shall devise in the same manner as I hereafter declare concerning my Gulf View property. I direct that if my granddaughter Ann dies under age eighteen and without children my Gulf View property be sold and the proceeds be donated to the Guardian Needest Fund.”*

Ann dies on her eighteenth birthday in a motor vehicular accident. Roger dies three months later having achieved the age of eighteen. Neither of them has children.

The following wish to claim the properties as follows –

- (a) Ann’s parents claim both properties;
- (b) Roger’s wife claims the Westmoorings property; and
- (c) The Guardian Needest Fund claims both.

Advise the executor of the Will.

---

### **QUESTION 8**

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 therefore

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 this 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 26<sup>th</sup> and 27<sup>th</sup> of December.*
- 5. A day appointed by the minister for national observance.”*

Applewait has therefore sought your advice.

What is your advice? Give reasons.

---