

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2013

LEGAL DRAFTING AND INTERPRETATION
(FRIDAY, MAY 24, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Some years ago, the Government became alarmed at the increased incidence of cases in which criminals were breaking into buildings located in the port areas of the country, and stealing imported goods. Police investigations indicated that there were numerous reports of suspicious persons lurking in the vicinity of port facilities shortly before the commission of the crimes.

In a bid to counter these developments, the Waterfront Protection Act (“the WPA”) was enacted. It is apparent from several provisions of the WPA that the statute was designed to cast a net of protection around structures, so as to secure them against criminal infiltration. Section 15 of the WPA provides:

“15. It is an offence for any person to be found in the environs of a building in a waterfront area, with intent to commit an offence.”

Jay Wain has been unemployed for some time, and is frustrated at the apparent hopelessness of his financial situation. One night in January this year, he managed to enter a port area undetected, and prised open a window to a warehouse. While inside the warehouse, he was about to force open a barrel containing goods when he was accosted by a security guard. Wain was taken into custody and charged for violation of section 15 of the WPA.

At the trial, lead counsel for the defence strongly argued that Wain could not be guilty of an offence under section 15 of the WPA, since he was not found by the guard “in the environs” of a building in a waterfront area, that is, in the vicinity of the building, but rather, inside the building itself.

In response, the Crown:

- (i) conceded that that on a strict literal interpretation of section 15, Wain was not found in the environs of a building in a waterfront area;
- (ii) contended, however, that to adopt such a literal construction in these circumstances would be ridiculous, since Parliament could not have intended that persons found just outside a building would be liable, while those found inside would escape liability;
- (iii) contended that it was permissible to depart from the literal rule to avoid manifestly absurd consequences, in keeping with the notable dictum of Lord Blackburn in River Wear Commissioners v Adamson (1876-1877) 2 App Cas 743, 764 – 765; and
- (iv) argued that the case of Adler v George [1964] 2QB 7 strengthened the prosecution's position.

You are a member of the defence team. Present your response to the prosecution's arguments.

QUESTION 2

Under the Betting (Control) Act (the "BCA"), which was enacted in the 1940's, it is a criminal offence for bookmakers to advertise for bets to be placed with them unless they are in possession of a licence obtained from the local Betting Commission.

In this regard, section 23 of the BCA provides:

“23. Any bookmaker who, without holding a current licence from the Betting Commission, knowingly circulates or distributes any advertisement contained in a document which invites the placement of bets with him, is guilty of an offence.”

There is no definition of the word “document” under the BCA, nor any other indication from that statute as to the meaning of the term. However, there are other statutes from that era which extend the ordinary meaning of “document” to cover “film” and “taped recording”.

At the time of passage of the BCA, legislators were concerned about the multiple verified reports of fraudsters taking bets from the public and refusing to pay out winnings when due. This concern is evident from several provisions of the BCA.

Horseracing in Style Ltd. (“HSL”) is a bookmaker which is anxious to establish itself as the market leader in horseracing operations in the jurisdiction. HSL received legal advice that section 23 of the BCA did not preclude it from advertising for bets via modern electronic billboards. Accordingly, HSL earlier this year arranged for multiple advertisements, which solicited the placement of bets with it, to be carried on electronic billboards in all the major towns.

The Director of Public Prosecutions/Attorney General recently brought criminal proceedings against HSL, on the ground that the placement of the messages via the electronic billboard system constituted the circulation or distribution of advertisements in a document, contrary to section 23 of the BCA.

At the trial, HSL's counsel argues that while the messages carried on electronic billboards constituted advertisements, they were not "contained in a document", and consequently, HSL had not infringed section 23 of the BCA. In support of this position, counsel contends that:

- (i) having regard to the state of technology when the BCA was enacted in the 1940's, legislators would only have associated the word "document" with ordinary printed material, for example, newspapers and magazines, and possibly films and tape recordings, which existed at the time, and were addressed in other statutes;
- (ii) Parliament would therefore not have intended "document" to extend to the modern sophisticated technology represented by electronic billboards, which were only introduced several decades later; and
- (iii) such a restrictive interpretation of "document" is consistent with the historical approach to statutory interpretation, which is appropriate since it more closely aligns with Parliament's intention than any other approach.

You are counsel in the Office of the Director of Public Prosecutions/Attorney General. Your supervisor has asked you to present her with an opinion critically evaluating the arguments of HSL's counsel.

Present your opinion.

QUESTION 3

Under the Anti-Money Laundering Act (“the AMLA”), bank employees are required to report to a superior officer any suspicions they have that customers are engaged in money laundering activity. Such “suspicious transaction reports” (“STR’s”) are to be made confidentially. Section 27 of the AMLA reads as follows:

“27. It is an offence to disclose any aspect of a suspicious transaction report to a person who is not an authorised official”.

There is no definition of the word “disclose” in the AMLA, nor any evidence in the statute as a whole as to its intended meaning. However, the accepted dictionary meaning of “disclose” is “to make known, to reveal or to expose to view”.

The AMLA was directly influenced by the Report of the Financial Crime Law Reform Committee, which was established in the wake of a high-profile banking scandal in which several executives were implicated in corrupt practices involving the misuse of confidential information.

Kay Syme is an employee of Topline People’s Bank (“TPB”). Earlier this year, while at work, Syme saw a STR which had inadvertently been left open on another employee’s desk. The STR implicated Jon Mitts, a customer who is romantically involved with Lisa Pleb, a member of Syme’s church. Alarmed, Syme confided in Pleb what she had seen, and Pleb in turn shared details of the STR with Mitts.

Neither Pleb nor Mitts is an “authorised official” as defined in the AMLA.

Having been “tipped off” by Pleb, Mitts fled the jurisdiction. However, both Syme and Pleb have been charged with an offence under section 27 of the AMLA. Pleb is represented by the Office of Legal Aid, which assigned attorney-at-law Tim Fort to the case.

Counsel in the Office of the Director of Public Prosecutions/Attorney General indicated to Fort the prosecution’s willingness to enter into a plea bargain, under which Pleb would plead guilty to the charge in exchange for the prosecution seeking a heavily reduced penalty.

Fort, who is no longer handling the case, made the following file notes:

“The influential Law Reform Committee Report could prompt the view that Parliament had bank insiders in mind when it inserted section 27 of the AMLA, so that a restrictive interpretation should be given to “disclose” in that section.

However, I see no indication from the Act itself that legislators intended to depart from the ordinary meaning of “disclose”, which, in the dictionary sense, means to make known, to reveal or to expose to view. The word is clear and unambiguous, and on a literal reading is wide enough to cover revelations by persons both within, and outside the bank.

So, although our client Pleb is not a bank insider, she is just as liable as Syme, the bank employee, under section 27 of AMLA. In these circumstances, I don’t believe it is legitimate to consult the Law Reform Committee Report as a guide to meaning.

RECOMMENDATION: Advise Pleb to ENTER PLEA DEAL with prosecution for a reduced sentence.”

Fort’s file notes have now been passed to you. Critically consider Fort’s assessment and advise Pleb, who is anxious to know the most appropriate course to take in the circumstances.

QUESTION 4

Under the Sports (Drug Testing) Act (“the SDTA”), all athletes participating in competitive sports are required to submit urine samples to the Anti-Doping Agency (“the ADA”) for purposes of drug testing.

The ADA was established under the SDTA with the general mandate to take measures to deter and detect the use of illicit performance-enhancing drugs in sport. Under the statutory scheme, once athletes submit samples to the ADA, they are to be sent to certain accredited laboratories for purposes of drug testing. All accredited laboratories are located overseas.

Section 8 of the SDTA is in these terms:

“8. On receipt of the “A” and “B” samples from an athlete, the Anti-Doping Agency shall, as soon as practicable, send both samples to an accredited drug laboratory for drug testing.”

The SDTA provides no indication of the intended meaning of the word “send”, as used in section 8.

Kee Lite is a promising track and field athlete who submitted A and B samples to the ADA last year. The ADA sent off the samples in reasonable time to Fast Serve Ltd. (“FSL”), a courier business, for delivery to an accredited drug laboratory in the United States. At the time of delivery of the samples to FSL, it was public knowledge that the courier’s employees were restive, having threatened industrial action.

The employees went on strike, and ultimately Lite’s samples were delivered to the drug laboratory months behind schedule. The drug-testing results revealed that both Lite’s A and B samples contained a banned performance-enhancing drug.

The ADA summoned Lite to a hearing on the test results. At the hearing, he challenged the findings, claiming that the inordinate delay in the delivery of his samples by FSL cast serious doubt on the integrity of the laboratory’s results. Further, Lite blamed the ADA for utilising FSL as the courier, at a time of known industrial disquiet.

You are the sole attorney-at-law on the panel hearing Lite’s case. Your research reveals the following:

- (i) the leading dictionaries indicate that the word “send”, used in section 8 of the SDTA, has more than one ordinary meaning;
- (ii) on one construction, the word means simply to cause to leave a particular place, that is, to send on its way, and does not extend to receipt at the ultimate destination;

- (iii) alternatively, the word means not merely to cause to leave a place, but rather to deliver to its ultimate destination;
- (iv) the SDTA was heavily influenced by the Report of the Task Force on Sports Doping in your jurisdiction, which was set up in response to the international scandals involving high-profile athletes found guilty of drug cheating;
- (v) the Task Force's Report emphasised that to effectively combat the mischief of drug misuse, the supervisory drug agency had a duty, in the interest of fairness, to ensure the integrity, and timely delivery to destination, of drug samples submitted for testing.

Write an opinion assessing the application of section 8 of the SDTA to the facts of Lite's case.

QUESTION 5

Several decades ago, there had been a growing number of vendors selling their products in the ports of your jurisdiction. The large numbers of persons, carriages, bicycles and handcarts that had congested these areas created disorder and opportunities for criminal activity, and impeded businesses associated with the ports. Consequently, the Vending (Restriction) Act ("the VRA") was passed.

The Long Title to the VRA provides:

"AN ACT to prohibit small traders from displaying or selling their goods within ports or related facilities without a permit, and for connected purposes."

Section 12 of the VRA reads as follows:

“12. A person who sells or displays any goods in a port, harbour, wharf, quay, jetty or other coastal facility, without first obtaining a permit from the local authority, commits an offence.”

There is no indication in the VRA of the meaning of “coastal facility”.

Holly Bale, a higgler, has been alarmed at her decreasing ability to earn a living from her small business. However, she was comforted by the news that a new public park was being opened in an area immediately adjoining the main port, as part of the Government’s thrust to create more “green areas” within the city.

Last month, Bale went to the park and strategically positioned her stall containing items for sale. Bale does not hold a permit from the local authority. She was questioned by a constable, and later charged for displaying goods in a coastal facility, namely, a park, without having a local authority permit, contrary to section 12 of the VRA.

Bale has now approached you to represent her.

Critically examine Bale’s case and advise whether there are arguable grounds to resist the charge.

QUESTION 6

Ann Tane is an interior decorator who operates a medium-sized business. Last year, she managed to secure a lucrative contract to decorate a newly constructed wing of rooms at Paradise Rio ("PR"), a hotel resort.

The contract for the project contains the following provisions:

"2. In this contract, the following words bear the meanings respectively assigned to them -

....

"employee" includes full-time employee, part-time employee, casual labourer, agent and associate.

....

17. The contractor [Tane] shall ensure that every employee permitted to participate in any aspect of the works set out in this agreement is adequately supervised to ensure the delivery of the highest quality work."

Having embarked on the PR project, Tane soon realised that the job could not be completed within schedule unless she received external assistance. Relying on the recommendation of a friend, Tane engaged Sid Redd, who operates his own business, as an independent contractor on the project. Tane assigned Redd a particular cluster of rooms to decorate, and did not closely monitor the execution of this sub-project.

After carrying out an inspection of the overall project, the General Manager of PR complained about substandard workmanship in the rooms assigned to Redd. Tane asked Redd to correct the deficiencies identified, but Redd has been uncooperative.

PR has now sent Tane a formal letter claiming a breach of paragraph 17 of the contract. The letter asserts that Redd, even if an independent contractor, still qualifies as Tane's employee under the contract, on the basis that:

- the definition of "employee" under paragraph 2 of the contract is an inclusive one, and is therefore not intended to exclude appropriate work relationships (including independent contractors) omitted from the list;
- the nature of the work carried out by Redd is so integrally connected to the overall project that Tane has to bear responsibility for that aspect as the project manager.

The letter also threatens Tane with legal action if the defects are not corrected by a certain date.

Tane now seeks your advice on the merits of PR's claims, and presents the contract to you. Your perusal of the contract reveals that:

- the definition of "employee" is only one of many definitions where a list of items is introduced by the word "includes";
- there is a separate set of definitions using the word "means" to introduce a list of other items.

Advise Tane on her legal position under the contract with PR.

QUESTION 7

Under the Social Insurance Benefits Act (“the SIBA”), modest cash grants and certain other benefits are payable to “a member of the immediate family” of a deceased person, where the deceased had been a contributor to a special scheme for vulnerable citizens established under the statute.

There is no specific definition of “a member of the immediate family” under the SIBA, and the scope of the term is unclear from an examination of the statute as a whole.

Jill Gate was a contributor to the special scheme under the SIBA at the time of her death in January 2013. Don Ham, Gate’s common law husband of nine years, had been a faithful supporter to her and their children during the union, and particularly during Gate’s final illness.

Ham made contact with the administrators of the statutory scheme with a view to claiming any cash grant or other benefits available to him under the SIBA. However, the administrators rejected Ham’s claim, on the basis that he does not qualify as “a member of the immediate family” within the meaning of the SIBA. They contend that:

- there is no explicit provision in the Act recognising the status of a common law spouse;
- consequently, “a member of the immediate family” should be construed to cover Gate’s children and legal spouse only.

Disturbed, Ham consults you as to his options. Your research into the Hansard records reveals the following statement made by the Minister of Social Protection, in piloting the Bill during the Parliamentary debate leading to the passage of the SIBA:

“The Bill continues the trend of far-reaching social legislation introduced by the Government, which positively impacts the lives of the most vulnerable in our nation. This legislation will enhance the living conditions of contributors while alive, and on their death, the benefits will devolve on their ‘nearest and dearest’ who journeyed with them in life.”

Advise Ham whether there are any legal grounds on which to challenge the position taken by the administrators.

QUESTION 8

In 1991, the Domestic Violence (Prevention) Act (“the DVPA”) was enacted as landmark legislation designed to provide special protection for vulnerable members of a family who were threatened with violence by a dominant family member, usually an adult male. The legislation was highly controversial, and passage of several of its provisions through Parliament proved difficult.

Section 10 of the DVPA is one of the statute’s pivotal provisions. Subject to special conditions, the provision enables a spouse who feels threatened by the other spouse in the home environment to seek certain relief from the court.

Section 10 of the DVPA states:

“10(1) Subject to subsection (2), a spouse who believes that he or she faces a real threat of violence from the other spouse, may apply to the

Magistrates'/Resident Magistrates' Court for a family protection order and any of the other reliefs set out in section 12.

(2) Before any application to the court is made under subsection (1), the spouse in fear of violence shall obtain authorization from the Attorney General."

Domestic Violence proceedings are civil proceedings.

In 2010, the Civil Proceedings Act ("the CPA") was enacted to provide general guidelines in civil matters. The CPA makes no specific reference to the DVPA.

Section 33 of the CPA reads:

"33. In proceedings before the Magistrates'/Resident Magistrates' Court, an applicant may appear as of right and without the leave or authorization of any public authority."

It is accepted that the term "public authority" is wide enough to cover the Attorney General.

Hilla Tone has been living in increasing fear of her husband, who is an alcoholic and given to fierce outbursts of anger. Having concluded that the situation was now untenable, Mrs. Tone consulted your law firm for advice.

The senior partner interviewed her and wrote a file note indicating his preliminary opinion that section 33 of the CPA had impliedly repealed the restrictive provisions of section 10 of the

DVPA; consequently, no authorization of the Attorney General was required to apply for relief under section 10.

The file note has been passed to you with instructions to review the opinion.

Critically evaluate the senior partner's assessment and provide him with your reasoned opinion.

END OF PAPER