

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2010

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, JUNE 4, 2010)

(ORIGINALLY TIME-TABLED FOR FRIDAY, MAY 28, 2010)

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.
- (f) **Where the current date is relevant in answering any question, that date is to be treated as being the date for which this examination paper was originally time-tabled as shown above.**

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

Last month, Tony Jones and his girlfriend Beatrice Bruce were invited by Tony's former employer, Will Bates, to dinner at the upscale Moonlight Hotel that Will was staying at. The appointment was set for the 22<sup>nd</sup> at 7:00 p.m.

On the evening of the 22<sup>nd</sup> it was raining and so Tony and Beatrice both arrived at the Hotel with their umbrellas and raincoats.

Upon entering the building, they were met by Will who introduced them to Hylton Stuart, the owner of the Hotel. Hylton then offered to take their umbrellas and raincoats but they objected at first, pointing out that they were very expensive designer items. However, Hylton prevailed on them and instructed his assistant to put them away.

Tony, Beatrice and Will, escorted by Hylton, then proceeded to adjoining premises on which Hylton operated a restaurant.

Later that evening, after dinner, as they were about to leave, Tony and Beatrice requested their umbrellas and raincoats. They were told that they could not be found. Then and there they demanded that Hylton compensate them to the sum of \$12,000 for the loss of their property. Hylton, however, offered them \$1,000 as a goodwill gesture and further advised them that under the Hotel Keepers Act, a copy of which was posted in the reception area, the maximum sum he was liable to pay was Two Hundred Dollars. They refused the offer.

The Hotel Keepers Act provides as follows -

Short  
Title

1. *This Act may be cited as the HOTEL KEEPERS ACT.*

### LIABILITY OF HOTEL KEEPER

*Limitation of liability on hotel keeper:*

2. *No hotel keeper shall after the coming into force of this Law be liable to make good to any guest of such hotel keeper any loss or injury to goods or property brought to his hotel (not being a horse or other live animal or any gear appertaining thereto or any carriage), to a greater amount than Two Hundred Dollars except in the following cases, that is to say:*

1. *When such goods or property shall have been stolen, lost, or injured through the default or neglect of such hotel keeper or any servant in his employ;*
2. *When such goods or property shall have been deposited expressly for safe custody with such hotel keeper:*

*Provided always, that in case of such deposit it shall be lawful for such hotel keeper if he thinks fit, to require as a condition to his liability that such goods or property shall be deposited in a box or other receptacle fastened and sealed by the person depositing the sum.*

*Obligation to receive property:*

3. *If any hotel keeper shall refuse to receive for safe custody as before mentioned any goods or property of his guest, or if any such guest shall through any default of the hotel keeper be unable to deposit such goods or property as aforesaid, the hotel keeper shall not be entitled to the benefit of this Law in respect of such goods or property.*

### NOTICE TO BE POSTED

*Notice:*

4. *Every hotel keeper shall cause to be kept conspicuously posted in the office and public rooms in his hotel a copy of this Law printed or plainly written and he shall be entitled to the benefits of this Law in respect of such goods or property only as shall be brought to his hotel in which such copy shall be posted as aforesaid.*

Tony and Beatrice have sought your advice. Advise them.

## QUESTION2

Carny Valle and his wife, Passa, attended a carnival soca jam where he became drunk. Passa, however, had no alcohol to drink and was cold sober. After the party, they set off for home with Passa driving the car while Carny sat in the front passenger seat making a great deal of noise. While on the highway they were stopped by a policeman and Carny was charged with being intoxicated in a public place contrary to section 5 of the Road Traffic (Intoxicated Drivers) Act.

Section 5 of the Act provides –

*“5. No person shall be in an intoxicated condition in any public place.”*

Section 2 of the same Act defines public place as including inter alia –

- “(a) a highway, road, street, lane or other thoroughfare;*
- (b) a conveyance while it is at, in or on any place that by virtue of paragraph (a) of this section is a public place”.*

The magistrate before whom the matter was heard, acquitted Carny, holding that the word “conveyance” in the statute meant a public conveyance and did not include a privately owned motor car.

He further stated that it was his view that the purpose of the Act was to prevent persons from driving while intoxicated and this was supported by the short title to the Act. It was also to protect users of public conveyances from possible nuisance by persons who were intoxicated, and it would be an absurdity that a person should be convicted of an offence when he has taken all reasonable precautions to ensure that he and his car would be driven on the highway safely and without risk of injury to others in a public place. He then cited the dictum of Lord Blackburn in River Wear Commissioners v Adamson (1877) App Cas. 746; 764 –

*“ . . . that we are to take the whole statute together and construe it all together giving the words their ordinary signification unless when so applied they produce an inconsistency or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification.”*

As Director of Public Prosecutions/Attorney General would you appeal this judgment (a procedure permitted by the jurisdiction)?

Give reasons for your decision.

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### **QUESTION 3**

In March this year (2010), Dr. Beaver Brook and his 16 year old daughter, Beavette, were driving out to the country when, on crossing a narrow bridge, the car broke down thus blocking the bridge. Dr. Brook's immediate thought was to wait until he could get assistance from other motorists. After five minutes, when no other vehicle appeared, he decided that he would have Beavette sit in the driver's seat and steer the car while he pushed it off the bridge. And this he did.

At the end of the bridge, however, was a decline which caused the car to travel some distance beyond the bridge. At that moment, a policeman rode up on a motor bike and saw Beavette steering the car until it came to a stop. Because of her youthful appearance he asked for her driver's permit. Her father then explained that she did not have a driver's permit but that she had merely steered the car while he pushed it off the bridge.

The policeman however, was not moved by this explanation and charged Beavette for driving a motor vehicle without being the holder of a driver's permit contrary to section 4 of the Road Traffic Act.

Section 4 provides –

*“4. No person shall drive a motor vehicle on a road unless he is the holder of a driver's permit for a motor vehicle of that class, and no person shall employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a driver's permit for a motor vehicle of that class, and if any person acts in contravention of this provision, he shall be liable to a fine of Five Thousand Dollars or imprisonment for six months.”*

You are the magistrate hearing the matter and it has been submitted by the prosecution that –

1. Under the Road Traffic Act a driver is defined thus –

*“... ‘driver’ includes any person actually driving a motor vehicle at any given time and any person in charge thereof for the purpose of driving whenever the same is stationary on any road.”*

2. The dictionary meaning of “drive” in the Oxford English Dictionary is “to urge onward and direct the course of, to guide a vehicle or the animal that drives it”; and in Chambers Twentieth Century Dictionary “to urge along, to hurry on, to control or guide the movements or operations of”.

3. That driving, in reference to a motor vehicle, connotes both propulsion and direction. The steering wheel is essential for driving, as are the gear stick, the accelerator pedal and the braking system.

4. In Ames v MacLeod, a Scottish case, the accused, who was alleged to have been driving a motor car, had been walking beside it as it ran down a slight

incline and had steered it. The judges of the Court of Sessions held that the substantial test was whether the accused was controlling the movement and direction of the car and they were of the opinion that he was.

On behalf of Beavette it was submitted that –

1. In the Insurance Act as well as the Road Traffic Act (U.K.) the definition of “driver” is as follows –

*“... ‘driver’, where a separate person acts as a steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle.”* The omission therefore of any reference to a steersman in the Road Traffic Act points with certainty to the conclusion that a steersman is not a driver;

2. In Wallace v Major [1946] KB 473, the defendant, who had no driver’s permit, sat in the driver’s seat of a disabled motor car while it was being towed by another car. Lord Goddard, C.J. said that *“... we are bound to construe the Act strictly and ought not to stretch the language in any way; and in my judgment it is impossible to say that a person who is merely steering a vehicle which is being drawn by another vehicle is driving that vehicle.”*

What is your judgment? Give reasons.

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#### **QUESTION 4**

The Agricultural Development Board refused to grant a licence to Whole Milk Dairies Ltd. by virtue of section 5 of the Agricultural Development Board Act which states as follows –

*“5. The Board may refuse to grant a licence where the applicant is not qualified by experience, financial responsibility and equipment to properly conduct the proposed business or for any reason the Board may deem sufficient.”*

The reason given by the Board for its refusal to grant the licence was that there were already enough dairies in the area in which Whole Milk Dairies Ltd. intended to operate.

Whole Milk Dairies Ltd. wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

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#### **QUESTION 5**

Your client, James Ray, was convicted on a charge of attempted murder after he shot his neighbour causing him serious bodily injury. As a result of information he gave to the police officer in charge of the investigations, during the course of such investigations, the gun which James used to commit the offence was found buried near his residence.

During the trial, James’ attorney-at-law objected to the admission of the evidence with respect to the gun, on the ground that it had been improperly admitted contrary to section 22 of the Criminal Procedure Code 1998. But the trial judge overruled this



objection and stated that the evidence was admissible under section 17 of the Evidence Act 1996.

Section 17 of the Evidence Act provides as follows –

*“17(1) No confession made to any police officer shall be proved as against a person accused of any offence.*

*(2) No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a magistrate shall be proved as against such person.*

*(3) Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer so much of such information whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved.”*

On the other hand, section 22 of the Criminal Procedure Code provides as follows –

*“22. No statement made by any person to a police officer or an inquirer in the course of any investigation under this Act shall be used otherwise than to prove that a witness made a different statement at a different time or to refresh the memory of the person recording it. But any criminal court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information not as evidence in the case but to aid in such inquiry or trial.”*

Since the trial, James has dismissed his attorney-at-law and has now sought your advice as to whether he should appeal his conviction.

What is your advice? Give reasons.

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## **QUESTION 6**

Scott, who recently graduated from law school, was instructed to draft a guarantee by the senior partner of the firm in which he is an associate. This guarantee was with respect to an assignment of a lease.

The senior partner gave him the following instrument set out below as a precedent he should follow –

### ***“GUARANTEE***

*The Guarantor in consideration of the Vendor making the foregoing assignment at the request of the Guarantor hereby covenants with the Vendor that the Purchaser will at all times hereafter duly pay the rent reserved by the Lease, the service charges (if any) and all other payments and costs thereby provided for and will duly observe and perform all the covenants on the part of the Lessee and conditions therein contained and that the Guarantor will at all times hereafter duly observe and perform all covenants on the part of the Guarantor with the Landlord of the property and will at all times hereafter pay and make good to the Vendor on demand all losses costs damages and expenses occasioned to the Vendor by the non-payment of the said rents, service charges or other payments or the breach non-observance or non-performance of any of the said covenants and conditions or any breach of the Purchaser’s covenants as to payments observance and performance and for indemnity expressed in this assignment and notwithstanding any termination of the obligations of the Purchaser or any successors in title of the Purchaser by reason of disclaimer by any Trustee in Bankruptcy or liquidator or the winding-up of the Purchaser or any successor in title of the Purchaser being a Corporation IT IS HEREBY AGREED AND DECLARED that any neglect forbearance or indulgence of the Vendor in enforcing or giving time to the Purchaser (or any Trustee in Bankruptcy receiver or liquidator of the*

*Purchaser) for any payments or observance of performance of any obligation shall not in any way release the Guarantor in respect of the Guarantor's liability under this present guarantee."*

Scott, however, 'fired-up' with theories of a more modern drafting style, redrafted the instrument as follows –

- "1. In consideration for this assignment by the seller, the guarantor agrees to:  
(a) comply with any covenant the tenant has broken; and  
(b) indemnify the landlord and the seller against any consequences of the tenant's breach.*
- 2. The guarantor's liability continues despite:  
(a) lenience by the landlord to the tenant; or  
(b) disclaimer in the bankruptcy or liquidation of the tenant."*

Comment on Scott's redraft.

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## **QUESTION 7**

### **"POWER OF ATTORNEY**

*BY THIS POWER OF ATTORNEY given on the 15<sup>th</sup> day of April Two Thousand and Ten, I JOHN DESOUZA of Coral Bay, Miami, Florida, U.S.A., Businessman, Appoint MARY DESOUZA of 22 Buttercup Way, Apartment 56, Businesswoman, my Attorney for me and in my name to do and execute all or any of the following acts, deeds and things that is to say –*

1. *To manage my business affairs, investments, securities and personal property for the time being in such manner as the Attorney shall think fit and to make any payments in connection with my business affairs, investments, securities and personal property.*
2. *To commence, carry on or defend all actions and other proceedings touching my property or affairs or any part thereof or touching anything in which I or my affairs may be in anyway concerned.*
3. *To settle, compromise or submit to arbitration all accounts claims and disputes between me and any other person or persons.*
4. *To accept the transfer of any stocks, funds, shares annuities and other securities which shall or may at any time hereinafter be transferred to me whether solely or jointly with any other person or persons.*
5. *To carry into effect and perform all agreements entered into by me with any other person or persons.*
6. *Generally to act in relation to my property and affairs and to this deed as fully and effectually in all respects as I myself could do.*

*AND I HEREBY UNDERTAKE to ratify everything which my Attorney or any substitute or substitutes or agent or agents shall do or purport to do by virtue of this Power of Attorney.”*

The Power was then properly executed and registered/recorded.

Mary DeSouza, the donee named in the above power of attorney, has come to see you. She tells you that John DeSouza, the donor of the power, who is presently in Florida, owns the following –

- (1) a travel agency which she has been managing;
- (2) a house and beach cottage, both of which are unoccupied;
- (3) shares in various local companies;
- (4) personal current and savings accounts in the National Bank.

She further tells you that –

- (a) she has been approached by an overseas company with a view to leasing the house for a period of three years;
- (b) the Hotel and Villa Association tells her that there is a desperate need for beach cottages for visitor occupation and wants her to make a cottage available for that purpose;
- (c) having regard to the present fall in the stock market she thinks she ought to sell the shares before they fall even further in value;
- (d) she has his cheque book and savings account book but does not know whether she can operate the accounts.

Mary DeSouza seeks your advice on her power with regard to (a) to (d) above.

What is your advice? Give reasons.

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### **QUESTION 8**

In April 2007, your client, Agatha Christie, entered into a written hire purchase agreement with respect to a Honda Civic motor car with Smart Guy, the owner of the car. The period of the agreement was for three years. Under the terms of the agreement, Miss Christie was to pay interest at the rate of twelve percent per annum on any sum due and payable by her at the expiration of the three-year period.

In April of this year (2010), at the expiration of the period, there was a sum outstanding payable by the client. She acknowledged the sum due but agreed to pay with interest at the rate of eight percent per annum. Smart Guy rejected this offer, however, and

referred to the provisions in the agreement with respect to interest which was set at twelve percent.

The basis of this dispute is the Hire Purchase Act 2009 which replaced the earlier Act of 1958. Under the new Act, section 5 provides for a maximum interest rate of eight percent. The Act of 1958 had no provision similar to section 5.

The 2009 Act provides *inter alia* –

- “3. No hire-purchase agreement entered into after the commencement of this Act shall be enforceable unless the agreement containing the particulars required by this section is in writing and is signed personally by the hirer and unless a copy thereof be delivered or sent to the hirer within seven days of the making of the agreement and no such agreement shall be enforceable if it is proved that the agreement was not signed by the hirer before the chattel was delivered to him under the agreement.
4. (1) In respect of every hire-purchase agreement whether entered into before or after the commencement of this Act, the owner shall, on any reasonable demand in writing being made by the hirer at any time during the continuance of the agreement, supply to the hirer a statement signed by the owner or his agent showing –

  - (a) the amount of the value of the chattel and, if the chattel was delivered after the commencement of this Act, the date on which the chattel was delivered to the hirer;
  - (b) the amount of any payment already received by the owner in respect of the hiring of the chattel and the date on which it was made;
  - (c) the amount of every sum due to the owner, but unpaid, and the date upon which it became due; and

*(d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.*

*(2) If an owner to whom a demand has been made under this section fails to comply therewith he shall not, so long as the default continues, be entitled to retake the chattel notwithstanding anything to the contrary in the agreement contained.*

5. *Notwithstanding anything in any hire-purchase agreement contained, the owner of the chattel subject to the agreement shall not be entitled to receive or recover from the hirer in respect of the value of the chattel, the option to purchase and the hiring, any sum in excess of the value of the chattel as specified in the agreement together with interest not exceeding eight percent per annum on any sum due and payable by the hirer at the expiration of the period fixed under the agreement for the payment of all instalments. Provided that such interest is payable by the hirer in terms of the agreement."*

Miss Christie has now sought your advice. What is your advice? Give reasons.

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