

FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 2007

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 25, 2007)

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

On Sunday, March 22, 2007, your client, Rebellous, the leader of a group known as the “Revolutionaries”, organized with others a ‘revolutionary groundings’ on the pasture of his family’s farm. There was a gathering of about two hundred persons. As each speaker addressed the gathering, persons became more and more agitated until the crowd became very boisterous, so that when Rebellous began addressing the crowd they were ready to burn and destroy the oppressive capitalist system.

A concerned citizen, who lived nearby, decided to telephone the police station in the nearby town. The police responded very quickly to the call. The police party consisted of a superintendent, two constables and ten civilians, who were said to be security guards working at various locations in the town.

On arrival the superintendent seized the microphone and said as follows –

“I hereby order you to disperse immediately and return to your homes or places of business”.

The time was approximately 5:45 p.m.

Within minutes thereafter, the crowd began to disperse, however Rebellous along with a few members of the ‘Revolutionaries’ remained at the farm and refused to leave. At 7:00 p.m. they were arrested and charged for refusing to disperse from a seditious meeting when ordered to do so, contrary to section 2 of the Seditious Meetings Act.

Section 2 of the Act states as follows –

“When any Justice, or Police Officer (in this Act referred to as an “Officer”) shall receive information on oath, or have reasonable cause to suspect that any meeting or assembly is held for the purpose of stirring up or exciting any person or persons to commit any act of insurrection or insubordination, or to obtain otherwise than by lawful means any alteration or change in the constitution or government of the country as by law established, or to commit the offence of administering or taking unlawful oaths, or for any seditious purpose whatsoever, every such Justice or Officer shall forthwith proceed to such meeting or assembly; and it shall be lawful for such Justice or Officer to require and take the assistance of any number of constables within the place wherein such meeting or assembly as hereinbefore mentioned shall be holden, or any other person or persons in their aid or assistance when they shall deem such aid or assistance to be necessary and requisite; and such Justice or Officer shall then and there order and direct, in Her Majesty’s name, all and every persons whom he shall find there assembled peaceably to disperse; and if any person or persons, notwithstanding they have been so ordered and directed to disperse, shall continue together by the space of half an hour after they shall have been so ordered and directed to disperse, then and in every such case the person or persons so continuing, on due proof that such meeting was of a seditious or treasonable nature, being thereof legally convicted, shall be adjudged guilty of an offence, and be liable to imprisonment with or without hard labour for a term not exceeding four years.”

Rebellous, who represented himself at his trial argued that he was not guilty of the offence for which he was charged since –

- (i) the meeting was not seditious as there were no physical acts of violence or insurrection at the farm;
- (ii) no offence was committed against the Act as the place where the meeting was held was private property and was therefore not a public place;
- (iii) that the action of the police was contrary to section 2 of the Act, as the police constables who accompanied the superintendent to the meeting were not taken from the place where the meeting was being held as required by section 2; and
- (iv) the order was not given in Her Majesty's name.

The judge, however, rejected these submissions and found Rebellous guilty as charged and sentenced him to imprisonment for six months.

Rebellous wishes to appeal his conviction and has sought your advice.

What is your advice? Give reasons.

QUESTION 2

On July 15, 2006, premises used as a grocery shop at 56 Ray Street was raided by the police and Ricky and others were caught engaged in illegal gambling activities. The police also found paraphernalia associated with casino gambling.

In 2004 the shop was leased to Dingo for five years, but in 2005 he left for Florida, U.S.A. and up to the time of the raid had not returned. In the meantime he had left Ricky in charge of the premises and as manager of the business. Sometimes Ricky slept there.

Ricky was charged under an information under the Gambling Act, to wit –

“Under section 3 (a) as being the occupier of a certain shop did unlawfully use it as a common gaming house”.

The relevant provisions of the Gambling Act state as follows –

‘In this Part of this Law –

“Common gaming house” includes any place kept or used for gambling, to which the public, or any class of the public, has or may have access, and any place kept for habitual gambling, whether the public, or any class of the public, has or may have access thereto or not, and any place kept or used for the purpose of a public lottery;

“Unlawful gaming” includes –

1. The act of betting or of playing a game for a stake when practised –
 - (a) in or upon any path, street, road or place to which the public have access, whether as of right or not; or
 - (b) in or at a common gaming house as defined under the Law.

A place shall be deemed to be “used” for a purpose, if it is used for that purpose even on one occasion only;

“Gambling” means to play at any game, whether of skill or chance, for money or money’s worth.

2. Every common gaming house is hereby declared to be a common and public nuisance contrary to law.

3. Whoever –

(a) being the owner or occupier, keeps or uses a place as a common gaming house; or

(b) permits a place of which he has the use temporarily or otherwise, to be kept or used by another person as a common gaming house; or

(c) has the care or management of, or in any manner assists in the management of a place kept or used as a common gaming house, or assists in carrying on a public lottery; or

(d) commits an act of unlawful gaming,

shall on conviction thereof be liable either to a fine not exceeding two hundred dollars or to be imprisoned, with or without hard labour, for a period not exceeding twelve months.'

It was argued before the magistrate on behalf of the Crown, that Ricky was an occupier within the meaning of the section charged, in that he was in control of the premises and further that he sometimes slept there.

In reply, counsel for Ricky submitted that he was wrongly charged as he was not the occupier of the place within the meaning of section 3. He was merely the agent of one Dingo, who was the tenant of the premises in question. His client only managed the business and therefore he could not be said to be the occupier of the premises under section 3 (a). To support his submission he cited R v Alfred Tai (1933) 1 JLR 59.

In R v Alfred Tai the court held that a person who has the control of the place even if not resident there is the occupier. One who is merely a manager and not the owner of a business is not the occupier of the premises.

The magistrate then gave judgment in the following terms:

“In my opinion the term occupier must be construed with reference to the object of the particular Act in which it occurs and means the person who has control of the premises. I agree with the decision in R v Alfred Tai as to who is an occupier and hold that it would be manifestly absurd that the accused who was a mere employee should be regarded as the occupier, in this case. And I am reminded of the decision of River Wear Commissioners v Adamson.”

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

Give reasons for your decision.

QUESTION 3

Mary Blythe drafted her Will without the assistance of an attorney-at-law in the following form -

“This is the last Will of Mary Blythe, widow, of #39 Orange Blossom Way Seatown.

I appoint my oldest child John Marc as my executor.

To my second son Cedric who took such good care of me during my illness I give the sum of \$10,000. I give to John Marc all the rest of my money including the money I have in Nations Commercial Bank.

To my daughter Carmen I leave my furniture, pictures, china glassware and other household goods. All the rest of my personal estate I leave to Francine my second daughter.”

The Will was properly executed.

Mary Blythe died on December 12, 2006. Other property that she possessed at the date of her death were two antique maps, a stamp collection valued at \$3,000,000 a seaside cottage and two vacant pieces of land.

John Marc has sought your advice with respect to the distribution of his mother’s estate.

Advise John Marc.

QUESTION 4

Your client, Ambassador Thomas Brown, a diplomat serving at the Embassy in Washington, U.S.A. but home on leave in April, had applied for a firearm permit to the police officer in charge of the parish of St. John, the parish in which he normally resides when in his country.

Section 6 of the Firearms Act provides –

“An application for the grant of a firearm or shotgun licence shall be made in the prescribed form to the police officer in charge of the parish in which the applicant resides and shall state such particulars as may be required by the form.”

Brown owns a house in St. John’s but he has let it for the duration of his tour of duty overseas.

The senior superintendent of police in charge of St. John’s, however, refused his application on the ground that he did not reside within the parish. Brown therefore appealed to the magistrate’s court requesting that the court reverse this decision.

The magistrate, however, upheld the refusal of the senior superintendent of police and gave his reason as follows –

“The point which troubled the superintendent and which led him to refuse the application was that in his view Mr. Brown did not reside in the parish. At the time of the application he had let his house and it must follow that subject to any covenant that there may be in the tenancy permitting the landlord to inspect and make sure that the tenant was not breaking the place up, he had no right to occupation.

It was said by Mr. Brown that section 6 should receive a wide construction as it has only an administrative purpose, namely to identify the relevant person, to deal with an application.

I think there is force in that submission, but I cannot get away from the fact that the legislature has decided that in general no one shall possess a firearm unless they are authorized in accordance with the procedures laid down by the legislature. The legislature could have said that anybody who has a residential base or anybody who owns a property could apply where that property is located, but it did not.

What Mr. Brown suggested was that 'resides' in this context was the place with which you have a residential connection at the present time or have had such a connection in the past, coupled with an intention to reside at that place in the future. That would certainly get over the problem which affects Mr. Brown and I am bound to say that I would have liked to assist Mr. Brown because it seems to me that if the legislature has made it impossible for a diplomat serving overseas to obtain a firearm certificate, it must be because those concerned never applied their minds to the problem, I am sure they would have made provision for it.

I am not averse to applying a broad construction in order to remedy any deficiencies in an Act of Parliament which would be apparent if one applied a narrow construction as proposed by Lord Denning in Notham v Barnet Council [1978] 1 WLR 222, but there are limits to that and here I feel bound by the rule *Expressio Unius*".

Mr. Brown wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

QUESTION 5

Since February of this year (2007) your client, Bin Rose, has had his Sunday morning sleep interrupted by the noise from a power mower and hedge trimmer being used by his neighbour across the street.

His neighbour, Hy Wildblood, who moved into the neighbourhood in February, has insisted on mowing his lawn and trimming the hedges in his garden every Sunday morning, beginning at about 6:00 a.m. Even during the drought period he has done so.

Repeated requests by Rose for Wildblood to desist from this activity so early in the morning or attach a silencer to the mower have fallen on deaf ears.

In mid April (2007) Rose attended a function that went on early into Sunday morning and which saw him getting home at 4:00 a.m. True to form, at 6:00 a.m. Wildblood started up his mower and began mowing a very parched lawn.

The noise startled Rose who had just fallen asleep. He jumped out of bed and clad only in shorts raced across the street and accosted Wildblood. He then said to him, "Yow, if you don't stop mowing your lawn in two minutes I will beat you up and break every bone in your body". Rose then returned to his house. Shortly thereafter, Wildblood shut off the mower. Later on that same day, Rose went over to Wildblood's house and shouted that if Wildblood ever attempted to mow on any Sunday morning again he would beat him up.

On the following Monday, Wildblood laid a charge under section 31 of the Criminal Offences Act against Rose. Section 31 states as follows:

"31(1) Every one commits an offence who by letter, telegram, telephone, cable, radio or otherwise, knowingly utters, conveys or

causes any person to receive a threat to cause death or injury to any person.”

The matter was heard last week and Rose was found guilty as charged. The judge in giving his judgment said that he was of the view that section 31 included face to face threats and the case of R v Wallace (1970) 74 WWR 763 was authority for this position.

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

Advise him. Give reasons.

QUESTION 6

Jenipher Williams, a first year law school student, while on her in-service training programme in the drafting office of her jurisdiction was assigned to redraft the Distress for Rent Act.

Section 2 of the original Act states as follows:

“2. A landlord shall not distrain for rent on the goods and chattels the property of any person except the tenant or person who is liable for the rent although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under or by virtue of an execution against the tenant or in favour of any person whose title is derived by purchase, gift, transfer or assignment from the tenant whether absolute or in trust or by way of mortgage or otherwise nor to the interest of the tenant in any goods on the premises in the possession of the

tenant under a contract for purchase or by which he may or is to become the owner thereof upon the performance of any condition nor where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative or in case such relative lives on the premises as a member of the tenant's family".

Jenipher's redraft of section 2 provides as follows:

"2. (1) A landlord shall not distrain for rent on the goods and chattels that are the property of a person other than the tenant or the person who is liable for the rent notwithstanding that they are found on the premises.

(2) Subsection (1) does not apply

(a) in favour of –

(i) a person claiming title under or by virtue of an execution against the tenant,

(ii) a person whose title is derived by purchase, gift, transfer or assignment from the tenant whether absolute or in trust or by way of mortgage or otherwise,

(b) subject to subsection (3) to property in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon performance of any condition,

(c) where property has been exchanged between the tenant and another person for the purpose of

defeating the claim of or the right of distress by the landlord, or

(d) where the property is claimed by the tenant's family or by any other relative of his if such other relative lives on the premises as a member of the tenant's family.

- (3) Where property is in the possession of a tenant as described in paragraph (2)(b) only the rights of the tenant under the contract may be sold."

Comment on the adequacy or otherwise of Jenipher's redraft.

QUESTION 7

Leslie Goodfellow consults you. He tells you that his uncle Robroy has been and still is his principal benefactor. He (Leslie) is a final year university student whose fees have been paid by Robroy since his first year. In addition Robroy bought him a one-bedroom apartment in a complex near to the University. The registered title to the apartment is in his (Leslie's) name. Finally his car, a Honda Civic, was also purchased by Robroy two years ago.

All of these gifts were given to Leslie, as he is the only member of the family, so far, to qualify to attend university and moreover because his mother died when he was twelve years old and his father never accepted responsibility for him.

Leslie's concern, however, arises from the fact that Robroy has strong connections with the underworld and it is rumored that his wealth has been acquired by illegal means as he has no identifiable and legitimate means of

employment. Recently Robroy was advised by a senior police officer that as soon as the Proceeds of Crime Act is brought into effect the police will be “coming after him”.

Section 5 of the Proceeds of Crime Act provides inter alia –

“5 - (1) Subject to subsection (9), the Court shall, upon the application of the Agency or the Director of Public Prosecutions, act in accordance with subsection (2) if the Court is satisfied that a defendant is –

- (a) convicted of any offence in proceedings before the Court; or
- (b) committed to the Court pursuant to section 52 (committal from Resident Magistrate’s Court with a view to making forfeiture order or pecuniary penalty order).

(2) The Court shall –

- (a) determine whether or not the defendant has a criminal lifestyle and has benefitted from his general criminal conduct;
- (b) if the Court determines that the defendant does not have a criminal lifestyle, determine whether or not the defendant has benefitted from his particular criminal conduct; and
- (c) identify any property used in or in connection with the offence concerned and make an order that that property be forfeited to the Crown.

(3) Where pursuant to subsection (2) the Court determines that the defendant has benefitted from criminal conduct, the Court shall identify the property that represents the defendant’s benefit from criminal conduct, and –

- (a) make an order that the property be forfeited to the Crown; or

(b) order the defendant to pay to the Crown an amount (hereinafter referred to as the recoverable amount) equal to the value of his benefits.

(4) Where the Court is satisfied that a forfeiture order should be made under this section but that the property or any part thereof or any interest therein cannot be made subject to such an order, and, in particular -

(a) cannot, on the exercise of due diligence, be located;

(b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;

(c) is located outside Jamaica;

(d) has been substantially diminished in value or rendered worthless; or

(e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering forfeiture of the property or part thereof, or interest therein, order the defendant to pay the Crown an amount equal to the value of his benefits.”

Leslie has therefore sought your advice as to whether he could be affected by this new legislation.

Advise Leslie. Give reasons.

QUESTION 8

Mary Souza, mother of Dorothy Souza who resides in New York, has come to see you with respect to the sale of her daughter's house at Queen Gardens, the letting of Dorothy's beach cottage at Sea Sand Villas and negotiating a mortgage on the cottage.

She shows you the title deeds to the properties, and a power of attorney duly executed by her daughter which is attached hereto and identified as "A".

Mary Souza seeks your advice as to whether she can act by virtue of the power of attorney.

Advise her. Give reasons.
