

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2017

LEGAL DRAFTING AND INTERPRETATION

(AUGUST 00, 2017)

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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Under the Young People’s Protection Act (“the YPPA”), the office of Young People’s Advocate is established to represent minors, between the ages of 13 and 17, who are brought before a court or other tribunal, on the basis that they are in need of care and protection.

Section 12 of the YPPA sets out four criteria for appointment to the office of Young People’s Advocate. The first requirement is that applicants must be qualified by experience in *“law, medicine, psychology, education or other professional discipline”*.

Dale Hert responded to an advertisement inviting applications for the post of Young People’s Advocate under the YPPA. Hert is a physiotherapist who has, over the years, developed particular expertise in treating sports injuries incurred by secondary school children performing at track and field events.

Hert’s application for the advertised post was promptly rejected. In a letter, the selection committee indicated that he had failed the first requirement, in that he neither qualified on the basis of the specific disciplines prescribed under section 12, nor the wider “other professional discipline” phrase. In the committee’s opinion, physiotherapy, while a professional discipline, was not in the same category suggested by the specific vocations set out in the provision.

Dissatisfied with this explanation, Hert consults you for advice.

Advise Hert whether there are arguable grounds on which to challenge the committee’s decision, giving reasons.

QUESTION 2

You have just joined the Office of the Parliamentary Counsel/Attorney General in your jurisdiction. Your first task is to critically examine the Hazardous Substances Bill, which was drafted by another attorney-at-law in the office, who has since gone into private practice.

The Bill is being introduced by the government, principally to regulate the business operations of dealers in certain dangerous substances. Under the policy, prospective dealers in such substances will be required to apply to the Regulatory Division of the Ministry of Health and Environment for a licence to operate.

The following extract from the Bill essentially relates to the grounds on which the Regulatory Division may revoke a licence, and a licensee's right of appeal against a decision to revoke:

“...

2. *In this Act, unless the context otherwise requires –*

“regulatory authority” means and includes the Regulatory Division of the Ministry of Health and Environment;

...

6. *The competent body may revoke a licence if –*

(a) the application for the licence has been found to contain false, inaccurate, untrue or misleading information;

(b) where material changes in circumstances have occurred which justify revocation of the licence;

(c) the licensee has failed to comply with a condition of the licence;

(d) if the licensee has been convicted of an offence against this Act; or

(e) there are any other circumstances which the competent body in its discretion deems sufficient in the interests of the safety and welfare of the community.

but if a licensee stands opposed to the repeal of the licence under this section, the licensee has a right and entitlement to appeal:

(a) in writing;

(b) to the Appeal Tribunal;

(c) installed under section 22 of this Act.

Comment on the appropriateness of your colleague's draft, paying particular attention to structure, language and modern drafting practices.

DO NOT redraft the extract, nor alter the policy indicated.

QUESTION 3

The Immigration and Travel Act ("the ITA") confers wide powers on immigration officers to regulate the entry into, and departure from your jurisdiction of foreign nationals. Section 65 of the ITA empowers an immigration officer to deny entry into the country of "any undesirable foreign traveller".

Jason Satt is a foreign traveller who has been invited to spend a week at the home of his friend, a citizen of your jurisdiction. On May 8, 2017, Satt arrived in the country by aircraft, and proceeded towards the immigration section for foreign nationals. Satt had tattoos covering a portion of his neck and most of his arms, and wore a nose ring.

When Satt approached the immigration officer at his station, the officer immediately led him to an inner room where he was interviewed. Satt had a letter of invitation from his

friend, sufficient funds and met all the customary criteria for entry into your jurisdiction. He was, however, denied entry into the country under section 65 of the ITA, and deported to his country of origin.

Satt comes from an affluent family in his own country and has consulted you on the merits of challenging the government for refusing him entry in May. Your research reveals that the ITA contains no definition or other guidance as to the meaning of the word “undesirable”, as used in section 65. Furthermore, there are conflicting dicta in the case law on the exact scope of its meaning.

The Hansard records on the ITA disclose that, when presenting the Bill in Parliament, the Minister for Public Security and Immigration had spoken to the powers of immigration officers under the Act. At one point, he had emphasised the need for such officers to have strong powers to “deny entry to our shores of persons deemed to pose a threat to public order, safety and health, and others who only come to exploit the vulnerable in our beloved land.”

On the basis of the above information, advise Satt whether there are any legal grounds on which to challenge the action taken by the immigration authorities. Give reasons.

QUESTION 4

Sara Mile, who is 25 years old, enjoys an active social life. While returning home late one night after a visit to a nightclub, Mile had the sense that she was being followed. She quickened her pace and arrived home safely. The following week, after a similar club visit, she returned home to find a note on her door, which read:

“I KNOW WHAT YOU DID LAST WEEK.”

Frightened, Mile ran into the house and locked all windows and doors securely. The next day she changed all the locks on the doors.

Two days later, while at home, Mile answered a telephone call, but only heard heavy breathing coming from the other end of the line. Alarmed, Mile promptly replaced the telephone receiver. This experience was repeated over the next few days, causing Mile great distress. The police were alerted. Eventually, she was forced to consult a psychiatrist, who diagnosed severe anxiety disorder, and prescribed medication.

A man was recently taken into custody for stalking a number of women, using techniques similar to those experienced by Mile. All the victims have suffered psychiatric injury similar to Mile's as a result of the harassment.

The suspect has now been charged on multiple counts of assault under section 27 of the Assaults (Punishment) Act 1872 ("the APA"), which makes it an offence for anyone to commit an assault "occasioning actual bodily harm".

At the trial recently, lead counsel for the Director of Public Prosecutions/Attorney General presented the case for the Crown. In response, defence counsel argues that no offence has been committed under section 27, since:

- (a) all the complainants have only suffered psychiatric injury, not "actual bodily harm" as required;
- (b) in the 19th century, the reference to "actual bodily harm" could only have meant physical injury; the legislature would not have contemplated psychiatric harm when enacting the APA, since the field of psychiatry was in its infancy at the time; and

(c) the courts today should only give effect to Parliament’s intention, as gathered from circumstances known to exist in 1872, rather than strain the language of the APA to accommodate the latest scientific understanding of the relationship between mental and physical injury.

You are a member of the prosecution team. Respond to the arguments of defence counsel, giving reasons.



QUESTION 5

Gee Nall is a member of a drugs trafficking network which is engaged in exporting marijuana from your jurisdiction to the United States of America.

Early one morning several months ago, Nall and two confederates were travelling in a “go fast” boat on a drugs trafficking mission in your country’s territorial waters. The boat contained several packages of marijuana. The police, acting on intelligence, intercepted the boat while it was close to shore.

The two accomplices jumped into the sea and managed to escape. Nall was seen throwing the packages overboard, and was taken into custody. The packages of marijuana were then recovered from the sea. Nall was charged with an offence under section 52 of the Narcotics Trafficking Act (“the NTA”), which reads:

“52. Any person found in possession of a Class B narcotic is guilty of an offence and is liable on conviction to the penalties prescribed in the Schedule.”

Marijuana is a Class B narcotic.

The NTA was enacted in direct response to the recommendations of a Government-appointed Task Force, which had submitted its Report entitled “Combating Illegal Drugs:

a New Dawn”. The Report identified drugs dealing as the single greatest threat to the stability of the country, and lamented the poor conviction record for drugs offences. It called for resolute, uncompromising legislative action to reverse the alarming increase in drugs offences.

At the trial, the defence made the following submissions:

- (a) the phrase “found in possession” in section 52 of the NTA should be strictly interpreted, requiring an accused person to actually have the articles in his custody at the time of apprehension;
- (b) when Nall was apprehended in the boat, none of the packages was on board ; and
- (c) consequently, Nall could not, on a literal construction of section 52, be characterised as a person “found in possession” of a Class B narcotic.

The prosecution have, however, brought to the attention of the court that the phrase “found in possession” is capable of bearing more than one meaning: a narrow interpretation requiring that a person be apprehended with the prohibited articles in his custody; and a wide interpretation which would include a person being observed with the prohibited articles in his custody, even if at the actual time of apprehension the articles are no longer under the person’s control.

Compelled to concede this point, the defence responded by asserting that when faced with two conflicting interpretations in a penal statute, the court should adopt an interpretation favourable to the accused. Accordingly, counsel submitted that the narrow construction be accepted in this case, and that Nall be acquitted of the charge.

You represent the Director of Public Prosecutions/Attorney General in the matter. Critically assess the defence’s position, in light of all the facts, and present your response to the court.

QUESTION 6

Doug Lyne, who is middle-aged, has taken out a health insurance policy with Stay Sure Limited (“SSL”). One of the special features of this policy is that if Lyne is injured in an accident in which “connected persons” are also harmed, these persons will have a portion of their medical expenses covered by SSL in certain circumstances.

Paragraphs 25 and 26 of the insurance contract provide:

“25. Where the connected person is a member of the insured’s family, that person shall be entitled to have fifty per cent of the costs of hospitalisation directly resulting from the accident covered by the insurer.

26. Where the connected person is a person for whom the insured would ordinarily be expected to provide, that person shall be entitled to have twenty per cent of the costs of hospitalisation directly resulting from the accident covered by the insurer.”

There are no other provisions of the contract giving further guidance on the meaning of the term “connected person”.

In March 2017, Lyne decided to renovate his two-storey home with the assistance of some relatives, including his 21-year-old cousin, Nesta Pool. While Pool was atop a ladder which was leaning against the outside of the house, he lost his balance and fell to the ground. Pool seriously injured himself, as well as Lyne, who had been positioned at the base of the ladder. Both Lyne and Pool were admitted to hospital.

At the time of the accident, Lyne had been providing partial financial support to Pool.

Pool is seeking to have SSL cover fifty per cent of the hospital bill, in accordance with paragraph 25 of the contract, on the basis that he is a member of Lyne’s family. However, SSL’s claims manager takes the preliminary view that, in the circumstances, Pool more

properly falls within paragraph 26 of the contract, and is only entitled to twenty per cent hospital support from SSL.

The matter has now been referred to you as in-house counsel for SSL.

Carefully consider the case, and advise the claims manager as to the liability of SSL in the circumstances.

QUESTION 7

Jason Jarr and four other men entered the farm of Maya Perl at 4:00 am on July 15, 2017, by dismantling some flimsy perimeter fencing on a section of the property. The men were all aware that peas, beans and peppers grown on the farm were ready to be harvested, and had decided to steal some of these crops. Each of the men carried large baskets to facilitate removal of the crops.

With their baskets full, Jarr and his cohorts were leaving the property when they were spotted by a farm worker, who sounded an alarm. All five men were apprehended by the police, who seized the baskets and the produce they were carrying. The police also found wallets and cigarettes on the men.

The men were told that they would be charged under the Agricultural Produce (Protection) Act, the relevant provisions of which appear below:

“...

2. For the purposes of this Act, ‘agricultural produce’ means any of the kinds of produce listed in the Schedule; ‘night’ commences at the end of the first hour of sunset and concludes at the beginning of the last hour before sunrise; and ‘offensive weapon’ includes firearm, knife or club.

3. If any person shall by night unlawfully take or reap any agricultural produce growing on any land, and have with him any bag, basket, receptacle or other container for the purpose of taking or reaping such produce, that person shall be guilty of an offence and on summary conviction shall be liable to imprisonment for a term not exceeding three months.

4. If any persons to the number of five or more together shall by night unlawfully enter any land for the purpose of taking or reaping any agricultural produce, any of such persons carrying an offensive weapon, each of such persons shall be guilty of an offence, and on conviction on indictment shall be liable to imprisonment for a term not exceeding six years.”

The list of produce in the Schedule to the Agricultural Produce (Protection) Act includes peas, beans and peppers. In your jurisdiction, sunset commences at 5:30 pm and sunrise commences at 6:00 am.

Jarr has contacted the law firm where you work, seeking legal representation. One of the partners of the firm now asks you to send her an opinion:

- (i) identifying all the offences created by the Agricultural Produce (Protection) Act, together with the penalties; and
- (ii) indicating whether Jarr can properly be charged for any of these offences. Your answer should assess each offence identified under (i).

Prepare the opinion.

QUESTION 8

Under the Limitation Act 1895 in your jurisdiction, a claim for personal injuries had to be brought to court within six years from the date when the cause of action accrued, that is, when the claimant sustained significant injury. This rule caused tremendous injustice in cases where a potential claimant had a latent injury, which was only reasonably discoverable after the expiry of the six-year period.

As a consequence, in 1980 Parliament introduced the Limitation (Extension) Act (“the LEA”), to delay the start of the limitation period in latent injury cases to the time when the claimant could reasonably have discovered the injury and its originating cause.

Against this background, section 13 of the LEA reads as follows:

“13. Time does not begin to run against a claimant until:

(a) the identity of the defendant is known to the claimant; and

(b) a reasonable person would conclude that an action against the defendant has a reasonable prospect of success.”

Jane Rue had been employed in the factory division of Smart Industrial Paints Limited (“SIPL”) for many years. Unknown to her, over time she became exposed to certain gases at the factory which started to cause significant damage to her liver in 1995. In 2003, Rue started experiencing severe internal pain, and after a series of medical tests, she was diagnosed that same year with a type of liver disease. Although the cause of the disease was unclear at this stage, her doctors thought it prudent to advise her to urgently inquire into the environmental conditions at SIPL.

Rue, however, was of the view that the disease was probably hereditary, and made no inquiries of SIPL.

It was not until late 2016 that, with other SIPL employees becoming ill, the source of the disease became clear. In May 2017, Rue initiated a claim against SIPL for the damage to her liver.

SIPL has accepted liability for injury to other employees, but not in Rue's case. SIPL's counsel argues in court that a reasonable person, acting on the medical advice Rue had been given, would have made inquiries from as far back as 2003. Based on the investigations made by other employees, Rue would have been able to determine the cause of damage by 2005 the latest; consequently, her claim would have expired six years later in 2011.

Rue's counsel rejects this. Relying on section 13(a) of the LEA, counsel asserts that Rue is able to claim within the extended limitation period, since the identity of the defendant SIPL was only "known" to Rue, on a literal construction of the paragraph, in late 2016; accordingly, time should not start to run against her before that date.

SIPL's counsel counters that, having regard to the object of the LEA, a strict literal approach to its interpretation is entirely inappropriate. Citing cases such as **Federal Steam Navigation Co. Ltd. v Department of Trade and Industry [1974] 2 All ER 97**, counsel submits that:

- (a) section 13 should be interpreted purposively, as it would be "totally unreasonable" and "unworkable" if a claimant could simply ignore reasonable advice which would have put him in a position to learn the identity of the defendant;
- (b) read as a whole, section 13 requires the adoption of reasonable actions by a claimant; and
- (c) it is therefore possible, in line with case law, to read into section 13(a), the requirement for due diligence on the part of a claimant, which would not unduly strain the existing language of the provision.

You are the judge considering these rival submissions. Carefully evaluate them and give your reasoned decision on whether a literal or purposive interpretation should be applied.

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