

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2016

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 20, 2016)

Instructions to Students

- (a) Time: **3½ 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

On Saturday, March 10, 2016, your client, Stokley Newton, a member of a group known as the “Revolutionary Brigade”, organized with others an anti-government rally on the pasture of a large farm just outside a small rural village. There was a gathering of about three hundred persons at the rally. As each speaker addressed the gathering, persons became more and more agitated until the crowd became very boisterous so that when the leader of the group, Robert Burns, known as “Red Bobby”, began addressing the crowd, they were almost in a frenzy and were ready to march to the capital and attack the Parliament building, as requested by Bobby.

An elderly citizen who lived nearby, concerned about the situation, phoned the police station in the nearest town which was approximately five kilometers away from the farm. The police responded very quickly to the call. The police party consisted of a superintendent, four constables and eight civilians, who were said to be security guards working at various locations in the town.

On arrival, the superintendent seized the microphone and ordered the crowd, in Her Majesty’s name, to immediately disperse and go home. The time was approximately 5:45 p.m.

Within minutes thereafter, the crowd began to disperse, however, Newton, along with a few members of the “Revolutionary Brigade”, 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 Officer as defined in section 2 of the Constabulary Force Act (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 of government of the island 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 person 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 felony, and be liable to imprisonment with or without hard labour for a term not exceeding four years."

Newton, 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; and
- (iii) 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.

The judge, however, rejected these submissions, found Newton guilty as charged and sentenced him to imprisonment for two years.

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

What is your advice? Give reasons.

QUESTION 2

Esau was convicted of the offence of interfering with a motor car without the knowledge or permission of the owner, contrary to the Road Traffic Act. At the time he was caught attempting to enter the car using duplicate keys, the car was parked in a carport on the owner's private property.

"Road" is defined in the Road Traffic Act as follows-

"Any street, road or open space to which the public are granted access, any bridge over which a road passes and includes any privately owned street, road or open space to which the public are granted access either generally or conditionally."

Section 5 of the Road Traffic Act states as follows-

"5. Any person who, without knowledge or permission of the owner, in any way interferes with a motor vehicle while the vehicle is on the road or in a parking place shall be guilty of an offence."

The judge, in handing down judgment, said-

"It was submitted on behalf of the accused, that for him to be guilty of the offence, it had to be committed while the car was in a public place, but I

cannot agree. It would be absurd to think that the accused should get away with his attempt to steal the car. And I have good authority for this. Lord Blackburn in River Wear Commissions v Adamson stated that a court should interpret an Act so as to avoid a result which was manifestly absurd, and Lord Blackburn had cited as authority for this ruling the case of Grey v Pearson.”

Esau was sentenced to two years’ imprisonment. His attorney-at-law, Genius Jones, has sought your opinion as to whether he should appeal the conviction.

Advise Genius Jones. Give reasons.

QUESTION 3

The testator, Edward Solti, by his Will (which he had made himself), having appointed his executors and provided for his debts and testamentary expenses to be paid, further provided as follows:

“to divide equally between my four children seventy-five percent (75%) of all my personal belongings and money that may be left in the bank and the other twenty-five percent (25%) of all my belongings to go to my wife Betty and I further state that my Dwelling House is not to be sold until after the death of my wife, the said Betty Solti. Only should in case of she getting married again, then the house shall be sold and the money divided as above.”

The Will was then dated May 1, 2010, and properly executed.

In 2012 he sold the house he had lived in for many years in the town. He then leased a house on a yearly tenancy and purchased a large agricultural property with a house thereon. He occupied this house for about three days each week, when he visited the property to inspect it and to obtain produce, which he sold in a shop operated by him in the town. He also owned a commercial building out of which he carried on his other business activities.

The testator died in July 2015. Since the testator's death, a dispute has arisen between the beneficiaries and the executors as to the interpretation to be given to the Will.

By a fixed date claim form issued by the executors, they seek answers to the following questions:

- (a) Do the words "seventy-five percent (75%) of all my personal belongings and money that may be left in the bank" mean:
 - (i) 75% of all real and personal estate of which the deceased was legal or equitable owner at the time of his death; or
 - (ii) 75% of only the personal chattels and effects and money in the bank of the deceased?

- (b) Do the words "twenty-five percent (25%) of all my belongings to go to my wife" mean:
 - (i) 25% of all real and personal estate of which the deceased was legal or equitable owner at the date of his death; or
 - (ii) 25% of all the personal estate of the deceased; or
 - (iii) 25% of only the personal chattels and effects of the deceased and moneys in the bank of which the deceased died possessed; or
 - (iv) 25% of only the personal chattels and effects of the deceased?

- (c) Does the term "dwelling house" used in the Will mean the agricultural property with the home thereon?

As the judge hearing the application, what is your judgment? Give reasons.

QUESTION 4

Fingers Bowers, was charged and convicted for an offence committed under the Vagrancy Act:

“that on Tuesday, March 21, 2016, and within the jurisdiction of this Court, he was unlawfully found with an offensive weapon, to wit a home-made gas bomb, with intent to commit a felony, contrary to section 6(2) of the Vagrancy Act.”

The Vagrancy Act provides, *inter alia*:

“Rogues and Vagabonds.

6. *Every person coming within any of the following provisions shall be deemed a rogue and a vagabond:*
 - (1) *Every person having in his custody or possession, without lawful excuse (the proof of which excuse shall be on such person), any pick-lock, key, crow-jack, bit or other implement of house-breaking, with intent feloniously to break into any dwelling-house, warehouse, store, shop or other building.*
 - (2) *Every person being armed with any gun, pistol, sword, cutlass, razor, bludgeon, or other offensive weapon or instrument, with intent to commit any criminal act.*
 - (3) *Every suspected person, or reputed thief, frequenting any wharf, or warehouse near or adjoining thereto, or any public place leading thereto, or any public place whatsoever or any place adjacent to a public place with intent to commit a felony.*

7. *Every person convicted of being a rogue and a vagabond shall be liable to imprisonment, with or without hard labour, for a term not exceeding twelve months, and every such pick-lock, key, crow-jack, bit or other implement, and every such gun, pistol, sword, cutlass, razor, bludgeon, or other offensive weapon or instrument as aforesaid shall, on the conviction of the offender, be forfeited to Her Majesty.”*

Before the magistrate/parish judge, the evidence led in support of this charge was that Sergeant Sharp, in company with others, was on patrol in the vicinity of King Street and Broad Lane (a commercial area) on March 21, 2016 at about 6:00 a.m. He saw four men in front of him and each appeared to have bottles in their back pockets. Sergeant Sharp called to the four men who looked in his direction and ran. He pursued Fingers and held him and took from his right back pocket a clear half-pint bottle containing liquid, pebbles and broken glass. It was stopped with a paper stopper. As he held Fingers he (Fingers) said, "Is Lefty give me to throw on a house."

Sergeant Sharp then cautioned Fingers and charged him for being armed with an offensive weapon.

The bottle, with its contents, was subsequently sent to the forensic laboratory for analysis, where it was found to contain gasoline, two pieces of broken glass and seven stone pebbles. The evidence, however, of the analyst was that if the bottle had been lit in that condition, it would not have exploded. If it had been lit and thrown it would not necessarily have caused a fire.

On behalf of Fingers (who did not give evidence at his trial), his attorneys-at-law submitted:

- (i) there was no evidence before the Court to establish that the bottle alleged to be taken from the accused was an offensive weapon, and in fact it was not designed to cause bodily injury; and
- (ii) there was no evidence before the Court that the accused had the bottle alleged to be found on him with intent to commit a felony.

Fingers wishes to appeal this decision and has now sought your advice.

What is your advice? Give reasons.

QUESTION 5

Tony Brown has brought an action to recover damages from Orville Jones for the loss of his young horse which was killed by Jones's pit bull dog, Sweets.

As the presiding magistrate/parish judge, the following has been submitted to you by counsel for Brown:

- (a) Section 2 of the Dogs (Liability for Injuries) Act provides as follows:
"The owner of every dog shall be liable to damages for injury done to every person or any cattle or sheep by his dog and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog or the owner's knowledge of such previous propensity or that the injury was attributable to neglect on the part of such owner. Such damages shall be recoverable in any court of competent jurisdiction by the person injured or by the owner of such cattle or sheep killed or injured."
- (b) Cattle is defined in the Concise Oxford Dictionary as "oxen; livestock".
- (c) In Child v Hearn (1874-5) 9 -10 L.R. Ex. 176, the word "cattle" was extended to include straying pigs under the Railway Clauses Consolidated Act 1854 which imposed an obligation to fence against the straying of cattle.
- (d) In Phillips v Bourns [1947] 1 All E.R. 374, the word "cattle" in Schedule D to the Income Tax Act 1918 (U.K.) was held to include pigs.
- (e) In Anderson v Ledgister (1955) 6 J.L.R. 358, the Jamaican Court of Appeal held that the word "cattle" included goats.

On the other hand, counsel for Jones submitted that:

- (i) The Dogs Act 1865 (U.K.), section 1 of which was verbatim with section 2 of The Dogs (Liability for Injuries) Act, was repealed in 1906 and replaced by a new Dogs Act in which "cattle" was defined to include "horses, mules, asses, goats and

swine.” Further, this definition was later amended in The Dogs (Amendment) Act to include poultry. Horses were therefore not contemplated in the 1865 Act.

- (ii) While the dictionary defines “cattle” to include livestock, the fact that section 2 provides for “cattle or sheep” shows that the statute was intended to be restricted to oxen and sheep only and not to be applied to livestock in general.

- (iii) In Tallents v Bell [1944] 2 All E. R. 474 the plaintiff lost his claim for damages in respect of rabbits destroyed as a result of an attack by dogs. This decision was made under the most recent Dogs Act (U.K.).

What is your judgment? Give reasons.

QUESTION 6

The Secretary of Easy Money Co-operative Society has written to you as follows:

“Dear Attorney,

A problem has arisen involving different interpretations of rule 42 of our new Rules.

This rule states as follows:

‘42. The Board of Directors is vested with the power and authority to purchase, lease, or otherwise acquire real and personal property and to borrow money for that purpose upon the favourable vote of at least three-fourths of all the Directors.’

Some of the directors are of the view that the provision means that decisions of this nature must be by a majority vote of at least three-fourths of the total membership of the Board. This has meant, on a number of occasions, that an otherwise properly constituted meeting of the Board has been unable to make a decision on an urgent matter to do with the acquisition of property because there were less than twelve directors present at a meeting (the Board consists of fifteen

directors) or that less than twelve persons, although constituting the required majority of the directors present, voted in favour of a proposal.

Recently for example, a property next door to the Society was advertised for sale and the Board wished to purchase it so that the Society's facilities could be extended. Further, the Society intended to borrow twenty-five percent of the purchase price from the Development Bank. When however, the issue for the purchase of the property came to be considered by the Board, there were only twelve directors present at the meeting, and one director indicated that he was not in support of the purchase.

Other directors, however, are of the view that when the rule speaks of "the favourable vote of at least three-fourths of all the directors", it is saying that the decision requires a three-fourths, or more, majority of the directors who are present at a duly constituted meeting of the Board and that this would mean the favourable vote of less than twelve directors, if the attendance was less than full. Rules 43 and 44 seem to support this view by providing that:

'43. The Directors shall meet together for the dispatch of business at least once in every three months, and subject thereto they may adjourn and otherwise regulate meetings as they think fit. Questions arising at any meeting shall be decided by majority vote. In case of any equality of votes the Chairman shall have a second or casting vote.

44. The quorum necessary for the transaction of the business of the Directors shall be a bare majority of the Directors.'

This is our current dilemma and we would appreciate your opinion at your earliest convenience as this is a matter of great urgency.”

What is your advice? Give reasons.

QUESTION 7

Your client, Simple Simon, who lived adjacent to a large undeveloped lot of land owned by him, recently returned home, after six months abroad, where he had gone for medical treatment. To his amazement he saw the lot cleared, divided into smaller lots, roads put in and light and water in place. Other development was in progress.

He immediately went on to the land and spoke to the person who appeared to be in charge of the site. That person informed him that the development was being carried out by Mr. Alec Smartman. Simon further discovered that the activity was being financed from his bank account with the National Bank.

The following day, Simon visited Smartman, who is his brother-in-law. Smartman expressed great surprise that Simon was angry at what was taking place. Smartman then showed him the Power of Attorney set out below with his (Simon's) signature appearing thereon and duly witnessed and registered.

Simon now tells you that he does not recall signing such an instrument but admits that it is his signature. He recalls being in the company of Smartman some time ago when he got quite drunk. Perhaps it was then that he signed it.

Advise Simon as to the validity of the Power of Attorney and the actions taken under it.

“POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I, SIMPLE SIMON of “Lily Cottage”, Queenstown, Pensioner, HEREBY APPOINT ALEC SMARTMAN of Clover Leaf Drive, Queenstown, Real Estate Developer, to be my true and lawful Attorney for me and in my name and for my use to act and conduct and manage all affairs as he may think fit with powers to execute documents of all kinds, to commence prosecute or compromise legal or arbitration proceedings of all kinds to compromise claims of all kinds to sell transfer or do any other act concerning any and all dower rights, claims and title which I may possess and to transfer the same in any manner concerned by any corporation company or by law and to receive and take for me and in my name and to my use all or any rents profits or issues of real estate belonging to me and to let the same in such manner as my attorney shall deem needful and proper and to lodge such sums into my bank account at the National Bank Main Street.”

QUESTION 8

Frances Field comes to see you. She tells you that her live-in boyfriend for the past six years, Toby Bigalow, moved out of their apartment after Christmas (2015) on the ground that she was having an affair.

She further tells you that Toby, over that six-year period, had regularly been supported by her since his various “sure winner” ventures from catfish farming to snail rearing had all come to nought. However, he has been a loving and warm person and has kept the “house fires” burning while she had to travel extensively as part of her job.

Last week she received a letter from an attorney-at-law which she shows you. The letter states that the attorney-at-law is acting on behalf of Toby and that he (Toby) is seeking maintenance from her as he is unemployed and financially embarrassed.

It also states that as of December 7, 2015, the new Guardianship and Maintenance Act came into effect and under the Act, Toby is entitled to be maintained by Frances.

The relevant provisions of the Guardianship and Maintenance Act are as follows:

'2 *In this Act:*

“cohabit” means to live together in a conjugal relationship outside marriage;

“dependant” means a person to whom another person has an obligation to provide support under this Act;

“maintenance order” means an order made under this Act for the maintenance of a dependant;

“respondent” means a person who, pursuant to this Act, has an obligation to maintain another person;

“single woman” or “single man”, used with reference to the definition of “spouse”, includes a widow or widower, respectively, or a divorcee;

“spouse” includes

(a) a single woman who, for a period of not less than five years, has cohabited with a single man as if she were in law his wife; and

(b) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband.

PART III. Obligation of Parties on Termination of Cohabitation

6. (1) *In the case of cohabiting parties and subject to the provisions of this section, after the termination of cohabitation each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs.*

(2) *An application for maintenance upon the termination of cohabitation may be made within twelve months after such termination, and the Court may make a maintenance order in accordance with Part VI in respect of the application.'*

Frances, who now seeks your advice, is of the view that the Act ought not to apply to her.
Advise Frances.

END OF PAPER

