

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2017

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 19, 2017)

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. Erasable pens are not allowed.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Peter Pine is a petty thief. He, along with three other men, entered the farm of Jo Mell at 3:30 a.m. on April 1, 2017, by breaching a section of the perimeter fencing. Their intention was to capture and steal a few chickens which they knew were on the property. One of the men (not Pine) had two specially sharpened knives in the trousers he was wearing.

As the men approached the enclosure where chickens were housed, and were about to pounce on some of the chickens, the caretaker spotted them and raised an alarm. All four were apprehended and handed over to the police, who searched them and found some cash, as well as the knives which one of them possessed. The men were told that they would be charged under the Livestock (Protection) Act, the relevant provisions of which appear below:

“...

*2. For the purposes of this Act, ‘dangerous weapon’ includes firearm, knife or club; ‘livestock’ includes cows, goats, pigs, chickens and horses; and ‘night’ commences at the end of the first hour of sunset and concludes at the beginning of the last hour before sunrise.*

*3. If any person shall by night unlawfully enter any land with any net, trap, snare or other device for the purpose of taking or destroying livestock, 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 three or more together shall by night unlawfully enter any land for the purpose of taking or destroying livestock, any of such persons carrying a dangerous 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 seven years.”*

On April 1, 2017 in your jurisdiction, sunset commenced at 5:30 p.m. and sunrise commenced at 6:00 a.m.

Pine has contacted the Legal Aid Clinic in your jurisdiction, seeking legal representation. You are an intern attached to the Clinic, and the Director now asks you to send her an opinion:

- (i) identifying all the offences created by the Livestock (Protection) Act, together with the penalties; and

- (ii) indicating whether Pine can properly be charged for any of these offences.

Your answer to (ii) should assess each offence identified under (i).

Prepare the opinion.

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## **QUESTION 2**

The Corruption (Suppression) Act (“the CSA”) was enacted in the wake of increasing public alarm at the high levels of corruption across the public and private sectors. Section 20 of the CSA is in these terms:

*“20(1) An employee who makes use of any improper employment benefit for personal gain commits an offence.*

*(2) For the purposes of subsection (1), ‘improper employment benefit’ means any employment benefit obtained by an employee to which he knows he is not entitled.”*

There is no definition in the CSA of the word “obtained”, as used in section 20(2), nor any other guidance in the Act as to its intended meaning.

Before the passage of the CSA, the government had appointed a Law Reform Committee on Corruption. The Committee’s report noted the ineffectiveness of the common law in combating corruption, and repeatedly called for strong legislative action to be taken to counter corruption in all its varied forms, whether blatant or subtle. The provisions of the CSA were overwhelmingly influenced by the Committee’s recommendations.

Mike Kite is a supervisor in a private sector company. Under his employment contract, Kite receives a salary and certain allowances as permitted by law. Since March 2015, however, Kite has noticed from his monthly pay slip that his bank account has been credited with an extra allowance. Kite immediately realised at the time that this was an administrative error on the part of his employer, since he was not entitled to this new allowance. Kite, however, took no steps to correct the error.

In January, 2016, Kite represented on a loan application to the People’s Bank Limited (“PBL”) that his remuneration package included the extra allowance. He also provided PBL with copies

of his pay slips as supporting evidence. In granting the loan to Kite, PBL was influenced by the inflated level of remuneration reflected on the application.

Subsequently, Kite's employer discovered the error in payment to Kite and ultimately reported the matter to the police. Kite was then charged under section 20 of the CSA.

In court, Kite's counsel conceded that the allowance was a benefit. He, however, submitted that his client was not guilty of an offence under section 20, on the ground that Kite had not "obtained" any improper employment benefit. Counsel contended that:

(a) firstly, the word "obtained" was open to two interpretations, based on dictionary definitions: namely, a narrow interpretation, requiring the employee to be deliberate and exercise active effort in procuring the benefit; and a broader interpretation, merely requiring the employee to be a passive recipient of the benefit;

(b) secondly, on the facts, Kite had merely been a passive recipient of the extra benefit, and that having regard to the ambiguity in the language of the section, it was appropriate that an interpretation favourable to the accused should prevail; and

(c) accordingly, the court should adopt the narrow interpretation of "obtained" and acquit his client.

You are counsel representing the Director of Public Prosecutions/Attorney General. Respond to the submissions of Kite's counsel.

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### **QUESTION 3**

In a bold social intervention a couple of decades ago, the government introduced measures to revitalise certain inner-city areas which had long been blighted by crime and unemployment. Among the measures adopted was the offer of refurbished housing to residents for rental on concessionary terms. The Housing (Urban Renewal) Act ("the HURA") was enacted to govern the rental scheme.

Section 28 of the HURA provides that on the death of any tenant under the scheme, "a member of the immediate family" may succeed to the tenancy, once certain conditions are satisfied.

There is no specific definition of “member of the immediate family” under the HURA, and there are conflicting suggestions as to the scope of the term on a reading of the statute as a whole.

Bill Gale was a tenant under the HURA at the time of his death in February 2017. His aunt, Sylvia West, had come to live with him and his two children after the death of his wife, when the children were babies. Sylvia had nurtured the children as her own over several years, and had been a bedrock of support to the family during Bill’s final illness, which lasted over a year. Sylvia is desirous of continuing Bill’s tenancy in her own name.

The administrators of the tenancy scheme at the Housing Department are sympathetic to Sylvia’s position, but take the view that she does not qualify for purposes of succession to the tenancy, within the meaning of the HURA. In their view, the expression “a member of the immediate family” should be construed narrowly to cover a tenant’s spouse and children, and perhaps a formal guardian of the children, which Sylvia was not.

Distressed, Sylvia consults you as to her options. Your research of Hansard reveals that during the Parliamentary debate leading to the passage of the HURA, the Minister of Housing, in introducing the Bill, spoke passionately about:

- (a) the new era that the legislation would usher in for tenants with previously unsatisfactory housing arrangements; as well as
- (b) the “rights of those loved ones” who were an integral part of the tenant’s family unit.

Advise Sylvia whether there is any legal basis on which to challenge the position taken by the Housing Department.

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#### **QUESTION 4**

Gus Reel was employed for several years as a courier for a firm, but lost his job following the decline of the business. He was then reduced to walking the streets of the capital city in search of financial support from friends, and a place to shelter until his fortunes turned around.

Frustrated by his inability to stabilise his life, Reel eventually resorted to petty theft, snatching items from vendors, shoppers and pedestrians in Central Square in the capital, and making good his escape. The police had come close to apprehending him on several occasions.

One day in March 2017, while Reel was walking through a market in Central Square, planning his next theft, he was spotted by a police inspector and taken into custody. Reel has been charged under section 18 of the Cities and Towns Act (“the CTA”) as a reputed thief frequenting markets, vending arcades and similar places in Central Square in the capital, with intent to steal.

Central Square is not close to the waterfront area or any waterway.

Section 18 of the CTA reads as follows:

*“18. Every reputed thief frequenting any canal, navigable stream, dock, quay, wharf or any other place, with intent to commit an offence, shall be deemed a rogue and vagabond and be guilty of an offence against this Act.”*

The object of the CTA, as appears from its provisions read as a whole, is to preserve law and order generally in cities and towns in the jurisdiction. The Long Title to the Act states:

*“AN ACT to preserve the peace and good order in urban centres; to protect residential property and business interests; to create an environment conducive to the safe conduct of commerce, and for connected matters.”*

Reel contacts the Legal Aid Centre for advice. You are one of two students assigned to examine the matter. Your colleague has sent you a draft memorandum arguing that Reel is not guilty of the charge. In his view, the places referenced in the charge (Central Square markets, arcades and similar places) are not contemplated by section 18, which, on a proper interpretation, is restricted in scope to waterways or waterfront facilities.

Critically assess the position taken by your colleague.

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## **QUESTION 5**

The Public Health Act (“the PHA”) was enacted in 1940 to implement measures to protect the health of residents in your jurisdiction. The PHA is wide-ranging and various aspects of public health are addressed in different divisions of the statute.

Section 32 of the PHA is in these terms:

*“ 32. Every vendor of second-hand goods who sells or delivers any article during the course of business to any person under the age of 14 years is guilty of an offence ...”*

The context of the provision indicates that its object is to prevent potentially infected items being passed from child to child, so averting the rapid spread of disease.

Phil Torr is engaged part-time in selling second-hand clothing, on a periodic basis, to assist his favourite charity. Shortly before Christmas 2016, Torr organised a successful jumble sale for the benefit of the charity. Some of the items offered in the sale were received from two 12-year-old children on behalf of their parents. By arrangement, Torr handed the children four live goldfish, placing them in plastic bags with water which the elated children had brought with them.

Constable Dare has long held a grudge against Torr. When he learnt the details of the children’s involvement in the sale, he brought a charge against Torr, under section 32 of the PHA, for delivering articles, namely, four goldfish, to two children under 14 years during the course of a jumble sale.

At the trial, counsel for the prosecution reluctantly concedes that the word “article”, in its natural, grammatical sense, refers to inanimate objects, and consequently, fish would ordinarily be excluded from the scope of that word.

Despite this, the prosecution contend that:

- (a) some animals, including fish, have been scientifically proven to be potential carriers of disease, and there is therefore no justification for restricting the interpretation of “article”, as used in section 32 of the PHA, to inanimate objects;
- (b) adopting such a narrow construction of “article” would create artificial and absurd distinctions between animate and inanimate things, and would be repugnant to the intention of Parliament; and
- (c) Lord Blackburn’s judgment in **River Wear Commissioners v Adamson (1876-77) 2 App Cas 743** provides authority for giving a more liberal interpretation to “article” under section 32, so as to capture animate things, including fish.

The defence are not disputing the assertion that animals, including fish, are potential carriers of disease. They vigorously argue, however, that there is no proper basis under the PHA for departing from the ordinary meaning of “article”, and that Torr should accordingly be acquitted.

You are the trial judge. Consider the opposing submissions of the parties and give your reasoned decision on the matter.

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## **QUESTION 6**

You are the most recent attorney-at-law to join the Office of the Parliamentary Counsel/Attorney General in your jurisdiction. Your first task is to critically examine the Hazardous Chemicals Bill, which was drafted by another junior 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 chemicals. Under the policy, prospective dealers in such chemicals will be required to apply to the Permanent Secretary in 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 Permanent Secretary will refuse to grant a licence to an applicant:

“...

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

*“competent authority” includes the Permanent Secretary in the Ministry of Health and Environment;*

...

9. *If the competent authority is satisfied that the applicant –*

*(a) is under the age of 18 years;*

*(b) is not a sufficiently adequate, fitting and suitably proper person to be granted a licence;*

*(c) who has been convicted of an offence prescribed in the First Schedule;*

*(d) the application contains any false or misleading representation;*

*(e) it would not be in the public interest to grant a licence to the applicant;*

*(f) the competent authority shall refuse to grant a licence under this Act.*



10. *PROVIDED THAT where the competent authority refuses to grant a licence under this Act, it shall render written notification to the applicant within seven days of its decision, pronouncing its reasons in writing.*”

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.

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### **QUESTION 7**

The Obscene Publications (Suppression) Act (“the OPSA”) was enacted in 1950 at a time of growing public concern about the increasing availability of pornographic material in the jurisdiction, owing to its potential impact on public morals.

Section 5 of the OPSA provides:

*“5(1). Any person who, for purposes of or by way of trade, or for distribution or public exhibition, publishes any obscene material shall be guilty of an offence ...*

*(2) In this Act, ‘publish’, in relation to ‘obscene material’, means to disseminate any obscene writing or other material which is directed to the public at large or any section of the public.”*

Jerry Irk is involved in several criminal activities, including the marketing of pirated digital video discs (DVDs). Earlier this year, Irk obtained a number of DVDs of the latest pornographic movies produced in Europe, and organised exhibitions of these in designated houses in various communities. Interested residents of these communities paid a fee to watch the DVDs at the designated locations.

The police, acting on a tip-off, raided two of the designated houses while the DVDs were being exhibited, and confiscated the DVDs and associated equipment. Irk was arrested and charged for publishing obscene material, namely, pornographic DVDs, by way of public exhibition, contrary to section 5(1) of the OPSA.

It is not disputed that the material on the DVDs is obscene, or that the audiences at the designated locations constituted a section of the public for purposes of the OPSA.

At the trial, Irk's counsel strenuously contends that his client did not "publish any obscene material", as contemplated by section 5 of the OPSA, since the DVDs did not constitute writing "or other material". Counsel supports this position by arguing that:

- (a) in 1950 when the OPSA was enacted, legislators would not have associated the phrase "other material" with the sophisticated digital technology inherent in DVDs, since such technology was only developed decades later;
- (b) Parliament could therefore only have intended "other material" to be limited to such material as existed at the time of passing of the Act; and
- (c) such an interpretation is consistent with the historical approach to statutory interpretation, which is preferable to one which invites the court to strain the language of the OPSA and so usurp the function of Parliament.

You represent the Director of Public Prosecutions/Attorney General in this case. Respond to the arguments of Irk's counsel, citing appropriate authorities.

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## **QUESTION 8**

In 1989, 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 17 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 17 of the DVPA states:

*“17(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’/Parish Court for a family protection order, and any of the other reliefs set out in section 20.*

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

Domestic Violence proceedings are civil proceedings.

In 2008, 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 38 of the CPA reads:

*“38. In proceedings before the Magistrates’/Parish Court, an applicant may appear as of right and without the leave or authorisation of any public authority.”*

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

Tammy Hank 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 Hank sought advice from the law firm in which you are an associate.

Marsha Brae, the attorney-at-law who interviewed Mrs Hank, wrote a brief file note indicating her preliminary opinion that section 38 of the CPA did not in law impliedly repeal the earlier section 17 of the DVPA; consequently, the authorisation of the Attorney General was required as a precondition to an application for relief under section 17.

Brae is on vacation and the file has been passed to you with instructions to review the note.

Critically evaluate Brae’s assessment and provide your supervisor with your reasoned opinion.

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**END OF PAPER**