COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 2019

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 17, 2019)

Instructions to Students

(a) Time: **3½ hours**

(b) Answer **FIVE** questions.

(c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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

Skid Town is an inner-city community blighted by crime and unemployment. Concerned residents have partnered with Arts Infusion Limited ("AIL"), a private company involved in the promotion of artistic expression, with a view to staging a variety of cultural events for the benefit of Skid Town's youth. The first of these cultural events was a theatrical performance, which was held in April 2019 at a public entertainment venue.

The theatrical production featured the cast members wearing folk costumes, including masks. Constable Rite observed part of the production and subsequently arrested and charged the actors for violation of section 15 of the Cultural Observances Act ("the COA"). The relevant provisions of section 15 are in these terms:

> *"15 (1) Subject to subsection (2), a person who is masked or otherwise disguised in a public place commits an offence.*
>
> *(2) A person commits no offence under subsection (1) when he or she is participating in a National Independence Ceremony, a National Emancipation Parade, a traditional dance performance of the National Development Institute, or in some other festival or cultural production."*

Jason Tier, one of the actors charged, believes that the theatrical performance presented by AIL is a "cultural production" within the meaning of section 15(2) of the COA, and consequently, that he is not in breach of section 15 of the COA. He has sought representation from the law firm to which you are employed as an associate.

In court, the prosecution argue that none of the accused have a defence under section 15(2) of the COA. In the Crown's view, the provision, on a proper interpretation, is to be construed restrictively, that is, it is only intended to cover state-sponsored cultural events, and does not extend to the private cultural production organised by AIL.

During an adjournment, lead defence counsel asks you to prepare an opinion on the merits of the Crown's argument. Your research into the COA as a whole reveals the following:

(i) other sections of the statute speak only to public cultural observances; and

(ii) the marginal/side note to section 15 reads: *"Disguises in events of official character".*

Prepare the opinion requested by the lead defence counsel, in light of all the relevant facts.

QUESTION 2

A few years ago, there was a massive corruption scandal involving importers of certain food items into your jurisdiction. Several prominent business owners were convicted of falsifying and destroying records in an attempt to obstruct the police investigations into the scandal. However, the court, in imposing sentences, lamented the low level of the maximum penalties available under the law, in light of the gravity of the offences.

In response to these developments, the Government introduced the Evidence Tampering Act ("the ETA"), which prescribes severe penalties for violations of several of its provisions. Section 39 of the ETA, one of the provisions attracting a heavy penalty, states:

> *"39. Every person who knowingly mutilates or destroys, or conspires with any other person to mutilate or destroy, any document or tangible item with intent to impede or influence a criminal investigation, is guilty of an offence."*

Gregory Hide, a plumber, is a bird-hunting enthusiast. In March 2019, he and some friends travelled to a forested area and indiscriminately shot a number of birds. A forest ranger accosted the group, and on examination of the dead birds, noticed that some of them belonged to the "Class A" species which enjoys protection from hunting under law. The ranger seized the Class A birds and threatened the group with prosecution.

Hide has some contacts within the Forestry Department and conspired with them to destroy all the Class A birds seized by the ranger. Following an investigation, the conspiracy was uncovered, and Hide was charged under section 39 of the ETA for conspiracy to destroy "tangible items, namely, twelve [Class A] birds with intent to impede a criminal investigation."

There is no definition of the expression “tangible item” in the ETA, nor any clear indication from the legislation as a whole as to its intended meaning.

In court, counsel for Hide conceded that the term “tangible item” in section 39, on a strict literal interpretation, was wide enough to capture these Class A birds, since they were material things capable of being touched. However, counsel vigorously contended that adopting such a strict literal interpretation of this expression would be “oppressive and absurd” in the circumstances, having regard to the object and purpose of the ETA and the harsh penalties prescribed.

In counsel’s view, the contextual background to the passage of the ETA, namely, the developments in the celebrated food import scandal of a few years ago, justified a departure from the literal rule. Accordingly, the term “tangible item(s)” should be restricted to those physical items used to record or preserve information, for example, computers and hard drives. On this basis, birds, although physical items, would not fall within section 39.

The trial judge rejected the defence counsel’s submissions and convicted Hide, ruling that:

(1) the term “tangible item” in section 39 was “clear in and of itself”, and therefore was broad enough, on a literal interpretation, to cover the birds in question; and

(2) he had no jurisdiction in law to examine any other rule of interpretation, since there was no ambiguity requiring clarification.

You are an intern in the law offices of defence counsel. He has now asked you to:

(i) consider the facts, the defence’s arguments and judge’s ruling; and

(ii) prepare a memorandum assessing the prospects for a successful appeal against the judge’s decision.

Prepare the memorandum.

QUESTION 3

Face-off Limited ("FOL") and Locomotion Limited ("Loco"), mobile telephone operators, have for years been in fierce competition with each other for market share in your jurisdiction. In September 2018, however, FOL and Loco joined forces by way of a formal agreement with a view to increasing their respective profitability levels. Regulators have approved this arrangement.

Under the agreement, technical staff from both companies have been collaborating on cutting-edge technology in preparation for the introduction of a new broadband network which the companies plan to jointly launch in December 2019. The collaboration entails the sharing of confidential data between qualified staff of both companies. The senior managers of each company have held a one-hour meeting with relevant staff, outlining the sensitivity of the data to be mutually shared, and the need for confidentiality. The meeting also addressed several other aspects of the collaboration.

Clauses 8 and 9 of the agreement provide as follows:

> *"8. Each party shall at all times keep confidential (and use its best endeavours to ensure that its employees and agents keep confidential) any confidential information which it or they may acquire in relation to the business and affairs of the other party to this agreement, and neither party shall use nor disclose such information except with the consent of the other party, or where requested by regulatory agencies or where obligated to disclose under compulsion of law.*
>
> *9. The obligations of each of the parties under clause 8 shall cease to apply to any information coming into the public domain otherwise than by breach by any such party of its obligations under this agreement."*

The following developments have taken place over the past few months:

(1) As a result of the business collaboration, Todd, a supervisor employed to FOL, was privy to certain confidential data held by Loco. In January 2019, Todd communicated this

information to his girlfriend's sister, who works at SpeedLite, a rival telecommunications provider.

(2) In March 2019, a clever cyber hacker was able to infiltrate the computer systems of FOL, and gain access to some sensitive data belonging to Loco, despite the very stringent security precautions taken by FOL. The hacker has leaked the data on several social media platforms, which has caused a public stir, to the embarrassment of both companies.

(3) Beth, a disgruntled employee of Loco, has filed a claim in the Supreme/High Court stating that the managers of Loco have gained access by false pretences to her private data, which they are passing off as Loco's. As a result, in April 2019, the court issued an order against both Loco and FOL to account for certain data in their possession. Disclosure by FOL of data relevant to the order could include confidential information shared under the collaborative arrangement.

You are a legal adviser to FOL, which has brought the matters at (1) to (3) above to your attention. Consider each case and advise FOL on the legal implications that arise.

QUESTION 4

Jon Oate has just opened Persian Oasis ("PO"), a restaurant in the town centre. PO is located in one of the 15 commercial units in the National Plaza, a commercial complex which also houses a supermarket, clothing stores and a medical centre.

PO serves cooked Middle Eastern cuisine to patrons for lunch and dinner in its spacious dining area, but it does not as yet offer takeout or delivery services.

Oate has learnt that the Government recently introduced a statutory scheme to offer financial benefits to certain types of businesses in the city. He consulted the firm to which you are employed for advice on whether PO qualifies for benefits under the scheme.

The matter had been referred for research to a law school student undertaking her in-service programme at the firm. Although the student was unable to complete the required research before her departure, the following facts have been established:

(1) The financial benefits scheme was authorised under section 51 of the Towns and Cities Act ("the TCA"), and applies to the owners or operators of "shops, cemeteries, warehouses and fast-food restaurants";
(2) There is no definition of the word "shops" in the TCA;
(3) "Shop" is defined in a leading dictionary to include "a building where goods or services are sold" ; and
(4) The language used in the TCA is typically restrictive, rather than expansive.

Oate's file has now been passed to you. The law student's concluding file note reads in part:

> *"My preliminary opinion is that PO, while not a fast-food restaurant, may be considered to be a 'shop'. Although in the strict literal sense, a restaurant is not ordinarily regarded as a 'shop', it seems appropriate to apply a broad meaning to the term, since there is no definition in the TCA.*
>
> *Using the leading dictionary definition, PO is a building where <u>the service</u> of providing for the food needs of customers is offered at a price (sold). Hence, PO might well qualify as a 'shop' under the TCA.*
>
> *Unfortunately, my time at the firm has ended before I was able to complete my research into whether any of the Latin maxims would apply to affect this provisional opinion."*

Critically evaluate the student's note in light of all the facts, and give your reasoned opinion on whether Oate qualifies for consideration under section 51 of the TCA.

QUESTION 5

Under the Parliamentary Elections Act 1952 ("the PEA"), a court may, at the instance of a petitioner, declare election results null and void on account of "a substantial irregularity in connection with the election for political office."

There is no definition of the words "substantial irregularity" under the PEA, and the meaning remains uncertain even after an examination of the statute as a whole.

The Government recently announced general elections in your jurisdiction. In a western constituency, a bitter political contest unfolded between the Government and Opposition candidates. Over several weeks, the Government candidate made reckless allegations against his Opposition counterpart's parents, who ran a successful chain of furniture stores in the parish. The slurs alleged that the parents oppressed poor and vulnerable members of the community in the hire-purchase financing arrangements offered by their stores.

These allegations tarnished the reputation of the parents, and appeared to significantly damage the Opposition candidate's election prospects. Opinion polls, which had previously given the Opposition candidate a healthy lead, swung conspicuously in favour of the Government candidate after the slur campaign. Ultimately, the Government won the seat by an impressive margin.

The Opposition candidate feels that she has been robbed of an election victory by the campaign strategy adopted by the winning Government candidate. She consults you for advice on whether there is any legal basis on which to challenge the election results.

Your research indicates that in piloting the Parliamentary Elections Bill in Parliament, the Minister for Electoral Affairs had made a certain statement in response to certain questions from other

members on the Bill. In the statement, the Minister had indicated that elections should not be interfered with on flimsy grounds; and that there had to be good evidence of favouritism or other corruption by polling officials, or agents of the Elections Board responsible for administering the elections, "or matters of a like nature".

Advise the Opposition candidate on whether she has cogent grounds on which to petition for an annulment of the western constituency election.

QUESTION 6

The Ancient Artefacts (Preservation) Act ("the AAPA") was passed in 1907 to provide a regulatory framework for classifying and preserving objects and materials indigenous to the jurisdiction, for the benefit of future generations.

Under the AAPA, artefacts are categorised into three distinct classes (A, B and C), and then preserved according to different procedures applicable to each class. The procedures are graded, with Class A enjoying premium protection, and Class C the lowest protection.

Class A comprises those materials whose historic value is regarded as of the highest status. These materials are referred to in the AAPA as "unique".

No definition is given for this term, but in the early 1900s that word was invariably used to refer only to an artefact that was regarded as one of a kind.

Under the AAPA, the Minister of Culture appoints a Committee for the Preservation of Culture ("the CPC") to oversee the arrangements for preserving the cultural heritage of the country. The CPC has, from its establishment, been applying a very stringent preservation regime to Class A artefacts, in line with the common understanding of the term "unique" in the early 1900s.

In February 2018, the CPC was reconstituted by the Minister with a view to ensuring an appropriate balance between older and younger members. Will Lyre, one of the younger

members, feels that some of the practices of the CPC are not compatible with the requirements of a modern heritage institution. He believes, for instance, that the approach taken to Class A artefacts is too rigid, and that several more objects now excluded from this category should benefit from the exclusive preservation regime set out in the AAPA.

However, the older CPC members have rejected his suggestions as being too "radical". This disagreement is undermining the effectiveness of the CPC.

You are the new legal officer attached to the Ministry of Culture and have been called on to advise on a proper interpretation of "unique" under the AAPA. Your inquiries unearth the following:

(1) Since the late 20th century, the word "unique" has broadened beyond the original understanding to describe not only objects that are one of a kind, but also those objects that are very unusual.

(2) Several artefacts currently classified as Class B have been characterised by some experts as "most remarkable" or "extraordinary".

(3) A former legal officer had expressed the view that there was no basis in law to interfere with the common understanding of words at the time the legislation was formulated, as this would defeat the intention of the legislators.

In light of all the available facts, advise the CPC on the proper approach to resolving the conflict.

QUESTION 7

You are the legal officer at the local authority/municipal corporation ("the Corporation") in your jurisdiction. Your task is to critically review a number of standard form commercial documents drafted years ago, with a view to their modernisation.

Among these documents is a licence typically granted by the Corporation to business persons seeking to rent space for entertainment purposes at amusement parks operated by the Corporation.

The licence contains a provision prescribing certain conditions to be observed by the licensee. The provision reads as follows:

> *"12. Every licensee who has been granted a licence for any part of the amusement park for a specific purpose shall -*
>
> *(a) occupy, use and operate that part of the amusement park exclusively for that purpose at the beginning of the festivities;*
>
> *(b) shall thereafter continue until the close of the festivities;*
>
> *(c) not bring or erect any machine, exhibition, game, stall or other amusement device on the amusement park until permission has been given by the Park Supervisor, and shall not bring or set up any machine, exhibition, game, stall or other amusement device on the amusement park until the Park Supervisor has determined the exact location for its placement, and the licensee shall remove all vans and trucks to the designated parking places by 6:00 p.m. on the opening day, and shall so arrange and conduct every exhibition or stall so as to provide sufficient exits;*
>
> *(d) exits shall be kept constantly clear and available for use and the construction of the framework, platforms, steps and seating shall be of the highest quality."*

Redraft clause 12 so that it is more reader-friendly, breaking it up into more paragraphs, adjusting the language and correcting structural errors, as deemed necessary.

(Do not alter the policy indicated.)

QUESTION 8

Cal Lito, a paralegal secretary, has mortgaged his apartment to Halo Building Society ("HBS"). The mortgage contract contains the following provisions:

> *"20. In the event that any mortgage payment is overdue for more than 30 days, the failure of the mortgage company to thereafter serve a notice on the mortgagor demanding payment of the outstanding sum, shall not in any way prejudice the right of the company to take the relevant legal action to recover the sum owing.*
>
> *.....*
>
> *35. Where any mortgage payment is overdue for more than 30 days, the mortgage company shall not exercise any of its legal rights to recover the sum owing unless it has first served a notice on the mortgagor demanding payment of the outstanding sum."*

Lito has been in arrears on his mortgage payments for more than 90 days. On March 20, 2019, HBS opted to take legal action to recover the arrears, although no demand notice had been previously served by the company on Lito.

Lito reviewed the mortgage contract and now recognises that Clauses 20 and 35 are totally irreconcilable. He recalls from his paralegal studies the existence of a rule of law to the effect that, in such cases of inconsistency, the later provision takes precedence over the earlier one.

Lito finds this comforting: it would mean that HBS's legal action against him is misconceived, since the precondition of a demand notice under Clause 35 was not met. However, to verify this position, Lito now consults you for advice.

Advise Lito on the validity of the legal principle on which he relies, referencing case law.

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