

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2018**

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 18, 2018)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

The International Convention on Air Quality was developed by the United Nations to combat the alarming deterioration in levels of air quality around the world. The language of the Convention is crafted in broad terms to ensure the widest possible protection of the world's population from air pollution.

A wide variety of expressions are used in the Convention, some of which are not defined, including the word "building".

A number of leading experts contributing articles in legal journals have noted that words which are not defined in this Convention should be given a generous, liberal construction, in order to fulfil the mandate of the Convention.

The government of your jurisdiction ratified the International Convention on Air Quality, and implemented its requirements in the Public Health Act ("the PHA"). Under section 81 of the PHA, "any office or other building" used to accommodate more than 100 persons at a time, is required to meet certain air quality standards set out in the First Schedule to the Act.

There is no definition of the word "building" in the PHA, nor any other indication in the legislation of the meaning of that word.

The Premium University College ("the PUC"), a registered college in your jurisdiction, recently held examinations for its students. Owing to a shortage of space in its stock of permanent buildings, the PUC hired a large, tent-like structure to accommodate the examinations. Over 150 students sat examinations in the structure, which was dismantled and removed from the campus at the completion of examinations.

This temporary structure did not meet the air quality standards prescribed in the First Schedule to the PHA, and the PUC has been charged with a breach of section 81 of the Act. At the trial, counsel for the PUC argued that the college had not violated section 81, since the examination centre did not constitute a "building", being only a temporary structure without a roof or walls in the conventional sense.

Mr Justice True agreed with this submission and dismissed the charge. In the course of his judgment, the judge stated:

“Counsel for the prosecution submitted that the examination centre constituted a ‘building’ for the purposes of section 81 of the Act. He urged the court to adopt a wide construction of ‘building’, and went to great lengths to cite the international context as well as journal articles in support of his arguments.

However, I do not find these sources helpful, since there is no express definition of ‘building’ in any relevant international instrument. In these circumstances, I am more attracted to the submission by the PUC that the plain meaning of ‘building’ should be applied. I see no justification here for deviating from the ordinary, natural understanding of that word, namely, a permanent, not a temporary, removable structure. The examination centre was in effect a sophisticated tent, not a building.

There is nothing in the PHA which suggests that the word should be accorded an unusual, strained meaning, and I must remember my constitutional role to apply, and not create, law. If the policy-makers desire to capture temporary structures of this nature, then an amendment will have to be made in Parliament.”

You are an intern at the office of the Director of Public Prosecutions/Attorney General. Your supervisor asks you to prepare a memorandum:

- (i) critically reviewing the judgment of True J., in light of all the facts; and
- (ii) giving your opinion whether there are viable grounds for a successful appeal against his decision. (Assume that the prosecution have a right of appeal).

Prepare the memorandum.

QUESTION 2

Ann West secured employment with Radio Supreme Limited (“RSL”), as a radio sports presenter on the popular “Sports Ultimate” programme in your jurisdiction. Her contract of employment is for a fixed period of two years, commencing on January 1, 2017 and ending on December 31, 2018, and provides a competitive remuneration package.

Other relevant terms of the contract are set out below:

“ SERVICES

4.1 *You are engaged by Radio Supreme Limited (“RSL”) as the presenter of the Sports Ultimate Programme (“the Programme”). You agree to present the Programme on Tuesdays and Saturdays (“the broadcast days”) of each week during the contract period.*

4.2 *You shall render your exclusive services to RSL on the broadcast days during each week of the contract between the hours of one and five o’ clock in the afternoon, and at such times RSL shall have first call over your services.*

4.3 *You shall not present a programme of similar format or content to the Programme nor shall you engage in any activity as a presenter or otherwise which conflicts with your engagement or duties as a presenter of the Programme during the contract period.*

...

UNDERTAKING AND WARRANTIES

You undertake and warrant that:

12.1 *you shall carry out all your obligations under this contract conscientiously and to the best of your skill and ability and at the times indicated in clause 4 above.*

12.2 *you shall keep the contents of this contract confidential and shall not without the prior consent of RSL make any statement or supply any*

information relating to your engagement or to the affairs of RSL, except as required by court order or to your legal advisers.”

In the summer of 2017, a new radio broadcasting company, Listen Up Limited (“LUL”), was established and has been attracting rave reviews. The operators of LUL have been trying to coax West to leave RSL and join their sports broadcasting team. West was initially hesitant, but since March 2018 she has been involved in exploratory discussions with LUL.

On Saturday, April 7, 2018, West advised her supervisor at RSL that she was ill and could not present the Sports Ultimate Programme scheduled later that day. West was in fact in good health, and spent that afternoon in advanced negotiations with LUL for employment by that company. During the negotiations, West disclosed to LUL details of her remuneration by RSL, as well as the contentious relationship between her supervisor and RSL’s managing director, which was creating a toxic environment at RSL.

RSL has now learnt of the dealings between West and LUL, and has referred the matter to you, its legal adviser. You are in possession of all the relevant facts above-mentioned.

Prepare a memorandum advising RSL whether West has breached her contract with RSL, and if so, in what respect(s).

(You are to assume that the contract is valid in all respects).

QUESTION 3

You have just been employed as a legal officer at the local authority/municipal corporation (“the Corporation”) in your jurisdiction. Your first 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 empowering the Corporation to revoke a licence on any of a number of grounds. The provision reads as follows:

- “13. The Corporation reserves power to revoke the licence and to close any machine, exhibition, stall or other amusement device at any time, if -*
- (a) any charges due under the licence have not been paid, or in the opinion of the Park Supervisor;*
 - (b) such machine, exhibition, stall or other amusement device is of a dangerous character;*
 - (c) or is of immoral tendency, or is not in accordance with the specifications set out in the application for the licence, or if the owner or operator thereof fails to observe, comply with and adhere to any of the statutory requirements, or misconducts himself disgustingly in an unsavoury unseemly manner;*
 - (d) and such owner or operator shall immediately upon receiving notice of such revocation, under the hand of the Secretary of the Corporation, cease and desist the working of such machine, exhibition, stall or other amusement device and remove it from the amusement park.*

In default of which it shall be lawful for the Corporation to cause such machine, exhibition, stall or other amusement device to be removed without the Corporation being liable for any loss or damage which may result from such removal.”

Comment on the appropriateness of this provision, paying particular attention to structure, language and the other usual drafting practices.

Do not re-draft the provision, nor alter the policy indicated.

QUESTION 4

Under section 37 of the Matrimonial Proceedings Act (“the MPA”), a court has power to set aside a decree of divorce previously granted, and order a rehearing of the case. This power is conditioned on the court being satisfied that a miscarriage of justice has occurred by reason of “fraud, perjury, wilful suppression of evidence or other circumstances”.

Section 37 of the MPA forms part of a series of sections grouped under the heading:

“Acts of Deception and Perverting the Course of Justice”

Jason and Sasha Blur were married seven years ago, but after a period of marital bliss, the relationship began to deteriorate. On several occasions, Jason had left the matrimonial home, but then returned to allow for reconciliation to take place.

Finally, Jason obtained a decree of divorce from Sasha in 2017, and orders were also made for division of property between them. At the time, Sasha had been intermittently ill, and could not properly focus on the contents of all the documents filed in the case.

Sasha is devastated by the divorce, as she believes that, with more perseverance, the marriage could have been salvaged. She is even more dissatisfied with the property division ordered by the court.

Sasha now has proof that material misstatements were made in some documents filed by Jason in the divorce and property distribution proceedings, although these appear to be genuine errors, rather than deliberate misrepresentations of facts.

Sasha now approaches you for advice on whether there are any grounds on which to reopen the case.

Advise Sasha, giving reasons.

QUESTION 5

Acting on intelligence, the police applied to a Magistrate/Parish Judge for a warrant to search premises for a palm-held, electronic notepad, which the police believed contained incriminating evidence in relation to illegal drug dealings. The court granted the warrant and, after searching the premises, the police found the notepad which, it was discovered, stored names, addresses, and details of drug transactions and supplies.

Following the investigation, Will Vine was arrested and charged for the offence of involvement in the importation and supply of cocaine, contrary to the provisions of the Controlled Substances Act 1960 (“the CSA”). The evidence contained in the electronic notepad is crucial to the Crown’s case.

At the trial, counsel for Vine contends that the contents of the notepad are inadmissible in evidence, on the basis that the notepad does not constitute a “document” for the purposes of section 17 of the CSA.

Section 17 reads as follows:

“Where a Magistrate/Parish Judge is satisfied by information on oath that a document directly or indirectly relating to a transaction or dealing which constitutes an offence under this Act is on any premises, he may issue a warrant to search the premises and seize that document.”

Counsel for Vine further submits the following:

1. At the time of enactment of the CSA in 1960, the term “document” could only have been understood to signify written, typed or printed paper material, since the development of computers, characteristic of the modern digital age, was still in its infancy.
2. The proper course for a court is to interpret legislation in the manner that legislators would have intended at the time of passage of the legislation.

3. In the event of any uncertainty as to the meaning of an expression in a criminal statute, the accused person should gain the benefit of the doubt and be acquitted of the charge.

You represent the Director of Public Prosecutions/Attorney General at the trial.

Respond to the defence's submissions.

QUESTION 6

Tim Seal left a house party late one night, having drunk a large amount of alcohol. While riding his bicycle home, he was stopped by a constable, who tested him and found that Seal had exceeded the permissible alcohol limit prescribed by law.

Seal was charged under section 40 of the Road Users Act 1952 ("the RUA"), which makes it an offence for a person to be drunk while in charge of a carriage on a road. There is no definition, nor other guidance as to the meaning of the word "carriage" under the RUA.

Seal has retained you to represent him at the trial. Your research reveals that prior to the passage of the RUA, there was a public outcry against the high levels of avoidable accidents involving motorised vehicles engaged in the commercial transportation of goods and passengers. The Government of the day had commissioned a Law Reform Committee, under the chairmanship of Justice Balke (the "Balance Committee"), to examine the issue and make recommendations for reform.

In its report, the Balance Committee made numerous reform proposals about offences relating to commercial transportation, but there is no mention of bicycles. The Government publicly endorsed the recommendations of the Balance Committee, which were then incorporated into the RUA.

The judge has asked you to prepare written submissions on behalf of Seal.

Prepare your submissions.

QUESTION 7

Ian Pax is an auditor at Outhouse, a large firm. Under his contract of employment, Pax is part of a contributory pension scheme, governed by the Pensions Act, with his portion of payments being deducted monthly from his salary.

The scheme also provides that in the event Pax were to die before attaining pensionable age, any sums owing to him would be paid directly to “any of his immediate relatives” that he nominated for the purpose. The term “immediate relatives” is defined in the Pensions Act to mean “parents, children, brothers or sisters.” No further clarification of these relationships is provided in the statute.

Pax selected his half-brother Gary Forum as his nominee.

Pax died in March 2018 before attaining pensionable age.

The managers of Outhouse are refusing to pay to Forum any moneys they owe Pax, contending that the definition under the Pensions Act should be narrowly interpreted to cover only brothers or sisters of the whole blood.

Forum is dissatisfied with this decision, and seeks advice from the law firm to which you are employed. The senior partner sends you a note, an extract of which reads:

“I remember when the Pensions Act was being debated in Parliament, it was hugely controversial. The Minister of Finance who was responsible for the Bill spoke at length in the debate about the type of benefits payable, and I believe about the class of beneficiaries who stood to gain.”

The text of the debate may therefore be relevant to Gary Forum’s case. Write me a memorandum on the admissibility of this type of evidence, and any limitations that may apply.”

Prepare the memorandum.

QUESTION 8

Cal Sims has been involved in a variety of criminal activities as part of a criminal network.

In 2016, he was a member of the “Get Rich” gang which was engaged in stealing credit card information from affluent business persons, who were conducting financial transactions at automated banking machines. The police arrested several members of the gang, but Sims managed to escape.

At the ensuing trial, the judge ruled that the existing legislation (“the Theft Act”) did not adequately cover the technological aspects of the activities engaged in by the accused. They were all acquitted on no case submissions.

Sims has continued to engage in credit card fraud in concert with some members of the Get Rich gang.

In January 2018, the Government passed the Credit Card (Fraud Prevention) Act which was designed to close the loopholes identified by the judge in 2016. Acting on intelligence, the police arrested Sims and charged him with offences under the 2018 legislation. The charges relate to separate incidents beginning from 2016 and ending in April 2018.

You are attached to the Legal Aid Centre which has been retained by Sims to represent him.

The Director assigns the file to you, with a note to consider the constitutional implications of the Credit Card (Fraud Prevention) Act.

In light of all the facts, prepare a memorandum for the Director, giving your opinion on the prospects for Sims's acquittal of all the charges.

END OF PAPER