

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2023

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 12, 2023)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **ALL** 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

PART A

Over the past few years, there has been a disturbing upsurge in assaults committed in public spaces during the celebration of Independence, and some other national festivals in your jurisdiction. In several cases, criminals took advantage of the national celebrations by wearing festive disguises as a cover to carry out the assaults.

Public pressure mounted for the Government to take decisive action to curtail these crimes. In 2022, the Cultural Development (Special Events) Act (“the CDSEA”) was passed as one of the measures to tackle the problem. Section 12 of the CDSEA reads as follows:

12 (1) A person who is masked or otherwise disguised within the designated area commits an offence, unless he has obtained a permit from the police to use the mask or other disguise, or he satisfies the requirements of subsection (2).

(2) A person commits no offence under subsection (1) when he or she is participating in a National Independence event, the National Emancipation Parade or an event officially approved to commemorate the life and work of any National Hero.

For the purposes of the CDSEA, the word “mask” is defined to exclude a mask designed or used to inhibit the spread of any disease, including COVID-19. Additionally, the expression “designated area” is defined in the CDSEA to mean the public spaces identified in the First Schedule of the legislation.

Citizen Town is an inner-city community blighted by crime and unemployment. In an effort to address some of the problems in Citizen Town, concerned residents have partnered with Arts and Culture Collective (“ACC”), a private organisation dedicated to the promotion of artistic expression. As a result of this collaboration with ACC, it was agreed that a variety of cultural events would be staged over a five-year period, with the net proceeds being donated for the benefit of Citizen Town’s youth.

The first of these cultural events was an open-air dramatic performance, based on the career of a deceased resident of Citizen Town, who had excelled nationally in the performing arts. The event was held in March 2023 at a public entertainment venue in the downtown business district.

The dramatic performance featured actors wearing traditional folk masks. The organisers had not obtained a police permit for the use of the masks. Constable Visor observed part of the production and subsequently arrested and charged the actors for being masked within the designated area, in violation of section 12 of the CDSEA.

Tyrone Jade, one of the actors charged, believes that there must be some defence open to him (and, by extension, the other actors) under law, since the performance was in pursuit of an entirely noble cause. Accordingly, he has consulted the City Legal Aid Clinic for advice. The Director of the Clinic has passed the file to you for review, with instructions to send him a brief memorandum on whether Jade has any viable defence against the charge.

Your research on the matter reveals the following:

- (i) There is no doubt that the dramatic production took place within the “designated area”, as identified in the First Schedule of the CDSEA.
- (ii) When the CDSEA is viewed as a whole, there is no other provision, nor any other indication, which has a bearing on the offence created under section 12.

Required:

Prepare the memorandum requested by the Director, in light of all the relevant facts.

PART B

The facts of Part A remain the same except as indicated below:

- (i) Section 12 of the CDSEA now reads:
12 (1) A person who is masked or otherwise disguised within the designated area commits an offence, unless he has obtained a permit from the police to use the mask or other disguise, or he satisfies the requirements of subsection (2).

(2) A person commits no offence under subsection (1) when he or she is participating in a National Independence event, the National Emancipation Parade, an event officially approved to commemorate the life and work of any National Hero or in any other festival or cultural production.

- (ii) Tyrone Jade, one of the actors charged, believes that the dramatic performance in which he participated was a “cultural production” within the meaning of section 12(2) of the CDSEA and, consequently, that he has not committed an offence under the provision.
- (iii) In court, the prosecution argue that none of the accused has a defence under section 12(2) of the CDSEA. In the Crown’s view, the provision is to be interpreted restrictively, so as to exclude privately-organised cultural activities.
- (iv) Other provisions of the CDSEA speak only to cultural performances organised by the Government or a state entity.
- (v) During a court adjournment, the Director of the Clinic asks you to prepare an opinion on the merits of the Crown’s argument.

Required:

Prepare the opinion requested by the Director, in light of all the relevant facts.

QUESTION 2

After protracted negotiations, the International Convention on Air Quality was adopted by the United Nations to combat the alarming deterioration in levels of air quality around the world. Owing to the divisive nature of the debate preceding the adoption of the Convention, the language of the agreed final version was crafted in broad terms as a compromise position, 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 international 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 (Air Quality) Act (“the PHAQA”). Under section 37 of the PHAQA, “any office or other building” used to accommodate more than 75 persons at a time, is required to meet certain air quality standards set out in the Third Schedule of the Act.

There is no definition of the word “building” in the PHAQA, nor any other indication in the legislation of the meaning of that word. No other legislation in your jurisdiction is of assistance in determining the appropriate meaning of “building”.

The Tertiary College (“the TC”), 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 TC hired a large, tent-like structure to accommodate the examinations. The structure was fully enclosed and was equipped with familiar features such as air conditioning, and entrances and exits. However, other aspects of the structure, including the materials used in its design, were unconventional.

Over 100 students sat examinations in the structure, which was subsequently dismantled and removed from the campus on completion of the examinations.

This temporary structure did not meet the air quality standards prescribed in the Third Schedule to the PHAQA, and the TC has been charged with a breach of section 37 of the Act. At the trial, counsel for the TC argued that the college had not violated section 37, since the examination centre did not constitute a “building”, being only a temporary structure without a roof or walls, and other features in the conventional sense.

Mr Justice Astute 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 37 of the Act. He urged the court to adopt a wide construction of “building”, and went to great lengths to cite the international context 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 TC 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 structure, not a temporary, removable one. The examination centre was in effect a sophisticated tent, not a building.

I must remember my constitutional role to apply, and not create, law. If the policymakers 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 Astute 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 3

Elegance Revealed Limited (“ERL”) is a company specialising in the provision of interior decorating services to affluent clients. ERL has established contractual arrangements with various persons to carry out services on its behalf at various locations in your jurisdiction.

Bill Yute is normally engaged to provide services for ERL in the capital and its suburbs. In March 2023, however, he was directed by the Managing Director to travel outside his usual operational area to redecorate certain guest rooms at Star Oasis, a hotel on the south coast. The engagement required Yute to travel by night to the south coast on Thursday March 16 and overnight in the area, so that he could begin the work at the hotel early the following morning (Friday March 17).

Under this arrangement, Yute was instructed to complete the refurbishing and return to the capital on that same Friday, in time for him to start a new project within his regular operational area on the following day (Saturday March 18).

ERL’s Assistant Manager emailed Yute to inform him that accommodation and meals had been arranged for him at a certain guest house near the hotel, as from Thursday night, March 16, until 4 p.m. on Friday March 17. The email also indicated that funds to cover transportation and miscellaneous expenses were available for collection at ERL’s office.

Yute collected the funds and travelled to the guest house on the night of Thursday March 16. He was served the pre-arranged meals and, in addition, he ordered several fine wines and charged them to ERL’s account.

Yute also contacted a former girlfriend, who took him to a nearby nightclub where he became drunk and disorderly. Some patrons at the club, disgusted by his conduct, cursed as they left the premises. There is no evidence of anyone at the club being aware of Yute’s association with ERL.

When Yute awoke about 7 a.m. on Friday March 17, he was still suffering from the effects of drunkenness and, consequently, he did not report to Star Oasis until close to midday. The hotel’s management was furious at the late start, and only reluctantly allowed Yute to proceed with the work, which was completed by late Friday evening.

The General Manager of the hotel sent a letter to ERL complaining about Yute's behaviour, and indicating that the hotel would be reviewing its policy to engage ERL for future decorating services.

Yute decided against returning to the capital on the Friday night, because he was feeling very tired. Instead, he planned to make the journey early on the Saturday morning, in sufficient time to start the new project within his area at 9 a.m. He was able to extend his stay at the guest house for another night, which was paid for out of his own resources. Although he left the guest house early on Saturday morning as planned, a fuel tanker had become disabled on the highway and blocked vehicular passage for a few hours. Yute eventually arrived in the capital at about 12:30 p.m., and was forced to postpone work on the new project until Monday March 20.

ERL has now been made aware of all the above developments. John Agill, ERL's Managing Director, consulted the law firm, to which you are employed as an associate attorney-at-law, for legal advice. You have been asked by a partner of the firm to draft an opinion, addressed to ERL's Managing Director, on whether Yute has breached any terms of his contract with ERL.

Having reviewed the contract as a whole, you have concluded that Clause 11 contains provisions relevant to the matter. Clause 11 is set out below:

11. You (Yute) undertake and warrant that –

11.1 while carrying out services for ERL under this contract, you shall not, without the prior written consent of ERL, order goods nor incur any liability on ERL's behalf;

11.2 you shall comply with ERL's guidelines on the acceptance of gifts or hospitality, whether in cash or kind;

11.3 you shall render the services required by ERL at such locations as are designated, and if ERL directs you to render services at a location outside your designated zone, you shall travel at ERL's request and expense to that other location to provide the services, in accordance with a schedule prepared and communicated to you by ERL;

11.4 during your engagement by ERL, you will not act or conduct yourself in any way which adversely affects the reputation of ERL, or which materially prejudices the affairs of ERL in any way;

11.5 you will use your best endeavours to attain and maintain such a state of health and fitness as will enable you to render your services under this contract as effectively as possible; and

11.6 you will indemnify ERL and keep ERL indemnified against all costs, expenses, losses and damages resulting from any breach of your warranties under this contract.

Using Clause 11 as your basis, advise the Managing Director whether Yute is in breach of the contract, and if so, in what respects.

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

END OF PAPER