

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS 2023**

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, AUGUST 04, 2023)

Instructions to Students

- (a) Time: **3 ½ 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

Pedro and Carlos are from a South American country torn by civil and political conflict. They arrived in your jurisdiction as refugees seeking asylum. Their applications for asylum are being considered and, in the interim, they have been provided basic accommodation, a small allowance and other benefits.

Owing to bureaucratic delays, the asylum application process is taking an inordinately lengthy time for a final determination to be made. As a result, the period for which the temporary accommodation and other benefits can be provided to Pedro and Carlos, under the applicable refugee legislation, is shortly due to expire. They are therefore facing the prospect of deprivation while they await the government's ruling on the asylum applications, as they will soon have no shelter or means of survival in your country.

Pedro and Carlos have learnt, however, that there may be a window of opportunity under the National Assistance (Homeless Persons) Act ("the NAHPA"). Section 66 of the NAHPA provides that the local authority/municipal corporation ("the Corporation") may provide temporary residential accommodation and accompanying benefits to persons who "by reason of age, illness, disability or other circumstances" are in need of care and attention.

Encouraged by this information, Pedro and Carlos applied for assistance under section 66 of the NAHPA. The Corporation, while sympathetic to their plight, rejected their applications on the basis of legal advice that neither of them qualified for assistance under the section. In the Corporation's opinion, on a proper interpretation of section 66, Pedro and Carlos had failed to show that:

- (1) they came within any of the specific criteria set out in the section; or
- (2) there were "other circumstances" justifying the need for assistance, since this phrase was restricted by the context to some physical or personal characteristic from which they suffered.

Now desperate, Pedro and Carlos approach your firm for advice on the validity of the Corporation's decision. The matter has been passed to you, an associate attorney-at-law at the firm. Your research uncovers the following:

The NAHPA was introduced on a wave of public sympathy, following the discovery of the corpses of three homeless young girls who had been denied basic humanitarian assistance from a series of government agencies. Several provisions of the NAHPA accordingly reflect the desire of the legislators that no one genuinely in need of support should be denied assistance.

The Long Title to the NAHPA states:

AN ACT to ensure that, to the greatest extent reasonably possible, residential accommodation and other benefits are made available to all persons whose particular circumstances convincingly demonstrate that they are genuinely homeless, or are likely to become so, and accordingly are in danger of becoming destitute if assistance is not provided by the state, and for connected matters.

In light of all the facts, write a reasoned opinion to your supervisor at the firm, on the likelihood of success of any challenge by Pedro and Carlos to the Corporation's decision.

QUESTION 2

Under the Drug Testing (Sports) Act ("the DTSA"), all athletes participating in competitive sports are required to submit urine samples to the Anti-Doping Agency ("the ADA") for purposes of drug testing.

The ADA was established under the DTSA with the general mandate to take measures to deter and detect the use of illicit performance-enhancing drugs in sport. Under the statutory scheme, once athletes submit samples to the ADA, they are to be sent to certain

accredited laboratories for purposes of drug testing. All accredited laboratories are located overseas.

Section 22 of the DTSA is in these terms:

22. On receipt of the “A” and “B” samples from an athlete, the Anti-Doping Agency shall, as soon as practicable, send both samples to an accredited drug laboratory for drug testing.

The DTSA provides no indication of the intended meaning of the word “send”, as used in section 22.

Charla Jear is a promising track and field athlete who submitted A and B samples to the ADA in 2022. The ADA sent off the samples in reasonable time to Speedie One Ltd. (“SOL”), a courier business, for delivery to an accredited drug laboratory in the United States of America. At the time of delivery of the samples to SOL, it was public knowledge that the courier’s employees were restive, having threatened industrial action.

The employees went on strike, and ultimately Jear’s samples were delivered to the drug laboratory months behind schedule. The drug-testing results revealed that both Jear’s A and B samples contained a banned performance-enhancing drug.

The ADA summoned Jear to a hearing on the test results, before the Anti-Doping Tribunal (Panel F). At the hearing, Jear challenged the findings, claiming that the inordinate delay in the delivery of her samples by SOL cast serious doubt on the integrity of the laboratory’s results. Further, Jear blamed the ADA for utilising SOL as the courier, at a time of known industrial instability.

You are the legal consultant to the panel hearing Jear’s case. Your research reveals that:

- (i) the leading dictionaries indicate that the word “send”, used in section 22 of the DTSA, has more than one ordinary meaning;

- (ii) on one construction, the word signifies simply to cause to leave a particular place, that is, to send on its way, and does not extend to receipt at the ultimate destination;
- (iii) alternatively, the word signifies not merely to cause to leave a place, but rather to deliver to its ultimate destination;
- (iv) the DTSA was heavily influenced by the Report of the local Task Force on Sports Doping, which was set up in response to the international scandals involving drug cheating in sports; and
- (v) the Task Force’s Report emphasised that to effectively combat the scourge of drug misuse, the supervisory drug agency had a duty, in the interest of fairness, to ensure the integrity, and timely delivery to destination, of drug samples submitted for testing.

Write a letter, addressed to Dr Marva Borne, the chairperson of the panel, giving your opinion on the proper application of section 22 of the DTSA to the facts of Jear’s case.

QUESTION 3

Willa Alto secured employment with broadcaster, Radio Spectac 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, 2022 and ending on December 31, 2023, and provides a competitive remuneration package.

Other relevant terms of the contract are set out below:

...

SERVICES

4.1 You are engaged by Radio Spectac 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.

...

On Tuesdays, Alto interviews leading sports personalities and takes callers’ questions; on Saturdays, she reviews the main sports developments over the previous week.

In the summer of 2022, a new radio broadcaster, Live Up Limited (“LUL”), was established and has been attracting rave reviews. The operators of LUL have been trying to coax Alto

to leave RSL and join their sports broadcasting team. Alto was initially hesitant, but since March 2023 she has been involved in exploratory discussions with LUL.

On Saturday, May 6, 2023, Alto informed her supervisor at RSL that she was ill and could not present the Sports Ultimate Programme scheduled later that day. Alto was in fact in good health, and spent that afternoon in advanced negotiations with LUL for employment by that company. During the negotiations, Alto 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.

Alto was one of the panellists on the sports programme of another broadcaster, which was aired live on Wednesday, June 14, 2023 between 2:00 p.m. and 3:30 p.m.

RSL has now learnt of all the developments concerning Alto, and has referred the matter to you, its in-house legal adviser. You are in possession of all the relevant facts mentioned above.

Prepare a memorandum to Jay Cale, RSL's Managing Director, advising on whether Alto 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).

END OF PAPER