

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2024

LEGAL DRAFTING AND INTERPRETATION

(FRIDAY, MAY 17, 2024)

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

Two years ago, it came to national attention that there was a substantial increase in the numbers of ‘at-risk’ teenaged children being brought before courts and other bodies for remedial measures to be taken. Of particular concern in many of these cases was the absence of any parent or other adult attending the proceedings with the children to provide support.

Alarmed by this development, the Government enacted the Young People’s Protection Act (the YPPA) in 2023, with the specific objective of creating a public office to provide representation and support to children in these circumstances. The policy contemplates potential candidates for the office being selected from a range of professional vocations.

The object of the YPPA is evident from the actual provisions of the legislation, read as a whole.

Under the YPPA, the office of Young People’s Advocate is established to represent minors, between the ages of 13 and 17, who are brought before a court or other tribunal on the basis that they are vulnerable and in need of care and protection.

Section 12 of the YPPA sets out four criteria for appointment to the office of Young People’s Advocate. The first requirement is that applicants must be qualified by experience in *“law, medicine, theology, education or other professional discipline”*.

Hart Duarte responded to an advertisement in January 2024 inviting applications for the post of Young People’s Advocate under the YPPA. Duarte is a physiotherapist who has, over the years, developed particular expertise in treating sports injuries incurred by secondary school children performing at track and field events.

Duarte’s application for the advertised post was promptly rejected. In a letter, the selection committee indicated that he had failed the first requirement, in that he neither qualified on the basis of the specific disciplines prescribed under section 12, nor the wider “other professional discipline” criterion. In the committee’s opinion, physiotherapy, although clearly a professional discipline, was not in the same category suggested by the specific vocations set out in the provision. No further details on the failure of the first requirement were provided in the letter.

It is clear that Duarte had satisfied the other three requirements for appointment to the post.

Dissatisfied with the committee's position, Duarte consults you for advice.

Your research reveals that several other sections of the YPPA use very liberal language when referring, expressly or by implication, to the professional background of the Young People's Advocate.

Advise Duarte whether there are arguable grounds on which to challenge the committee's decision, giving reasons.

QUESTION 2

Off the Wall Limited (OWL) and Easy Go Limited (Easy) are mobile telephone businesses operating in your jurisdiction. In 2023, OWL and Easy decided to formally collaborate in certain defined areas with a view to offering enhanced services to the public. Consequently, a draft contract was prepared which was subsequently approved by the relevant regulators. The contract was formally executed in July 2023.

Under the contract, technical staff and representatives from both companies have been cooperating on the use of cutting-edge technology. The collaboration entails the sharing of confidential data among qualified staff and representatives of both companies.

OWL's technical manager has held one three-hour training session with relevant staff and representatives, addressing multiple aspects of the collaboration. During this session, the manager spent 40 minutes outlining the sensitivity of the data to be mutually shared, and the need for confidentiality. OWL has not conducted any further training on the subject of data sensitivity and confidentiality since the contract was signed in July last year.

Since the beginning of the collaboration, OWL had, acting on expert technical advice, installed an impressive array of support systems to protect its computer network. These systems have been periodically upgraded, as guided by the expert team.

Clauses 8, 9 and 10 of the contract provide as follows:

8. Subject to clauses 9 and 10, each party shall at all times keep confidential, and use its best endeavours to ensure that its employees and representatives keep confidential, any confidential information which it may acquire in relation to the business and affairs of the other party to this contract.

9. A party shall neither use nor disclose the information referred to in clause 8, except with the consent of the other party to the contract, or where requested by regulatory agencies or where obligated to disclose under compulsion of law.

10. Each party shall take all reasonable steps to ensure that it has in place adequate mechanisms to safeguard the security of the information referred to in clause 8.

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

(1) As a result of the business collaboration, Fred, a representative of OWL, had legitimate access to certain confidential data belonging to Easy. Fred frequently fell behind in the completion of work assignments for OWL, and developed the habit of periodically taking his work home to accelerate completion.

In January 2024, while hosting a party to celebrate the birthday of Ida, his girlfriend's sister, Fred had carelessly left some of Easy's confidential data exposed in his study. Ida, who works at Life Spare, a rival telecommunications provider, secretly took notes of the exposed data.

(2) In March 2024, a clever cyber hacker was able to infiltrate the computer systems of OWL, and gain access to some sensitive data belonging to Easy. The hacker has leaked this data

to several social media platforms, which has caused a public stir, to the embarrassment of both companies.

(3) Tyra, a disgruntled technical employee of Easy, has filed a claim in the Supreme/High Court against Easy and OWL alleging that the managers of Easy have gained access by false pretences to some of her sensitive private data, which they are passing off as Easy's. Easy shared the data with OWL.

As a result, in April 2024, the court issued an order against both Easy and OWL to produce certain data in their possession. In compliance with the order, OWL has disclosed the relevant data which includes certain confidential information about Easy shared under the collaborative arrangement.

The facts at (1) to (3) above have all come to the attention of OWL's management. You are the legal adviser to OWL. Consider each case and advise OWL's managing director by letter on whether it has breached any aspect of the contract.

Note

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

You are not required to consider the substantive law of tort or any issues that may arise under data protection legislation.

QUESTION 3

Nat Gain is a member of a drug trafficking network which is engaged in exporting marijuana from your jurisdiction to the United States of America.

Early one morning several months ago, Gain and two confederates were travelling in a 'go fast' boat on a drug trafficking mission in your country's territorial waters. The boat contained several

packages of marijuana. The police, acting on intelligence, intercepted the boat while it was close to shore.

The two accomplices jumped into the sea and managed to escape. Gain was seen throwing the packages overboard, and was taken into custody. The packages of marijuana were then recovered from the sea. Gain was charged with an offence under section 41 of the Drug Trafficking Act (the DTA), which reads:

41. Any person found in possession of a Class B drug is guilty of an offence and is liable on conviction to the penalties prescribed in the Schedule.

The DTA provides no guidance on the intended meaning of the phrase “found in possession”, as used in section 41.

Marijuana is a Class B drug.

At the trial, the defence made the following submissions in response to the prosecution’s allegations:

- (a) the phrase “found in possession” in section 41 of the DTA should be strictly interpreted, requiring an accused person to actually have the articles in his custody at the time of apprehension; and
- (b) when Gain was apprehended in the boat, none of the packages was on board and, consequently, Gain could not, on a literal construction of section 41, be characterised as a person “found in possession” of a Class B drug.

The trial judge accepted the defence’s submissions and Gain was acquitted.

The Director of Public Prosecutions/Attorney General (DPP/AG) is considering an appeal against the judge’s ruling (a course of action permitted by law in your jurisdiction). He has referred the matter to you, an attorney-at-law in his office, with instructions to critically review the defence’s arguments, in light of the law and the facts, and prepare an opinion on the likelihood of success of any appeal against the decision.

Your research reveals the following:

- (i) The DTA was overwhelmingly influenced by a Report of the local Law Reform Commission (the LRC), a public body established to review, and present proposals for modernisation of, the laws of your jurisdiction.
- (ii) In the Report entitled “Combating Illegal Drugs: a New Dawn”, the LRC had identified drug dealing as the single greatest threat to the stability of the country, and lamented the poor conviction record for drug offences; it called for resolute, uncompromising legislative action to reverse the alarming increase in drug offences.
- (iii) Several legal experts have noted in reputable law journals that the phrase “found in possession” is capable of bearing more than one meaning: a narrow interpretation requiring that a person be apprehended with the prohibited articles in his custody; and a wide interpretation which would include a person being observed with the prohibited articles in his custody, even if at the actual time of apprehension the articles are no longer under the person’s control.

Prepare the opinion requested by the DPP/AG.

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