



Department of Justice  
Canada

Ministère de la Justice  
Canada

# A

## Manual of Instructions for Legislative and Legal Writing



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Canada

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**A**  
**Manual of Instructions for**  
**Legislative and Legal Writing**

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**BOOK THREE**



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## FOREWORD

This work is an attempt to put on paper the substance of the legislative drafting seminars I conducted at the University of Ottawa from 1970 to 1979, as part of a Master's programme in legislation. In addition to the drafting seminars (six hours per week during the academic year) I also lectured on the Construction of Statutes, the Legislative Process, and some of the problems in Canadian Federalism arising out of the distribution of legislative powers between the Parliament of Canada and the Legislatures of the Provinces that has a bearing on the drafting of federal and provincial legislation. The course I gave is more fully described in the *Journal of the Commonwealth Parliamentary Association*<sup>1</sup> and is also referred to in the Renton Report on the Preparation of Legislation.<sup>2</sup>

This publication is intended to serve as a companion volume to previous publications of mine, namely, *The Composition of Legislation*; *Legislative Forms and Precedents*; and *The Construction of Statutes*.

Although this work is intended primarily as an instruction or exercise manual for legislative drafting (whether federal, provincial or municipal), it is hoped that it may be of some use or interest to lawyers generally, since legislative drafting is but a special area in the larger field of legal writing, and the principles applicable to the former are to a large extent applicable also to the latter.

This manual is intended to be used either for self-instruction or for instruction under supervision.

One of my initial problems was the selection of exercise material. I felt that I could not invent suitable instructions for draft legislation, and therefore discarded any attempt to do so, except in chapters XVII and XVIII. I did not want to give assignments that would involve legal or factual research, as that would take too much time away from actual drafting. Hence, I chose for revision statutes or ordinances from early settlement days that dealt with ordinary simple subjects; no legal research, or very little, would be needed, and if any factual explanations were needed I could give them. This method gives at the same time training in the other side of the coin, namely, the interpretation or construction of statutes, since students would have to gather their instructions from a close reading and understanding of the assigned material.

I am grateful to my secretary Mrs. Clare Noël for typing the initial manuscript, largely from my handwriting, and I am especially indebted to Miss Beatrice Brace, who gave me much valuable assistance and advice in editing successive prints of each chapter.

1. October 1973, vol. 54, No. 4, 228-230.
2. 47.

E.A.D.

#### ABBREVIATIONS

Comp. Leg.	Driedger. Composition of Legislation (2nd ed.) Department of Justice. 1976
Leg. F. & P.	Driedger. Legislative Forms and Precedents. (2nd ed.) Department of Justice. 1976. Bound with Comp. Leg.
Cons. St.	Driedger. Construction of Statutes. Butterworths. Toronto. 1974.
Renton Report:	The Preparation of Legislation. Cmnd. 6053
Coode:	Legislative Expression. Appendix to the Report of the Poor Law Commissioners on Local Taxation. Reproduced as Appendix I to Comp. Leg.
Corry:	The Interpretation of Statutes. Appendix I to Cons. St.

## BOOK THREE

### CHAPTER IX

#### DRIVING OFF OF ANIMALS

This Ordinance also goes back to early pioneer years on the prairies, and requires some background information.

Towards the end of the last century, when the prairies were being settled, there were large tracts of ungranted and unfenced Crown lands. Bordering settlers would send their livestock out to these lands to graze on the natural prairie grass. Sometimes a herd belonging to one settler might be herded by a person on horseback, especially in the case of a large herd; sometimes by a member of the family, who would pack a lunch and watch the animals all day. Cattle would be on the farm overnight, but after milking would be put out to pasture. Towards evening they would be returned to the farm. Naturally, animals belonging to different owners would be mixed. In bringing animals home, therefore, the animals of the one owner would have to be separated from the rest. And if the animals were being herded, the herder might move his animals to another grazing place or to a watering place.

One of the objects of this assignment is to illustrate the difference in treatment between regulatory and purely penal enactments. Another is the difficulty in expression caused by the insertion of a proviso. Also, we encounter the condition subsequent.

#### AN ORDINANCE RESPECTING THE DRIVING OFF OF ANIMALS

1. Any person who takes, rides or drives off any animal belonging to another without the owner's consent 1, or who, when bringing his own animal from the prairie, takes or drives off the animal of any other person grazing with his own 2, or who wilfully or negligently causes or allows animals of other parties to be driven with his herd more than five miles from their grazing places 3, shall, upon conviction thereof before a Justice of the Peace, be liable to a fine not exceeding one hundred dollars and costs of prosecution, and in default of payment to be imprisoned for a term not exceeding three months: Provided that 4 if the owner of any animal, in bringing it from the prairie, finds it necessary to drive other animals a greater distance than five miles before he can separate his own animal from among them, he shall not be liable to the penalties imposed by this Ordinance, if 5 he at once drives back such other animals to the place from which he drove them.

2. Nothing in this Ordinance shall prevent the owner of any animal taken, ridden or driven off, as aforesaid, bringing a civil action for damages in addition to any penalty imposed under this Ordinance.

## COMMENTS

There are three offences.

1. The first offence applies universally. It applies in respect of one animal, and to a number of animals to whomever they may belong and whether or not any animals of the offender are mixed with others.

In this exercise only the word *animals* is used. In the original Ordinance horses, mules and cattle were mentioned, and in a subsequent general Ordinance respecting animals there was a definition section that even included geese. Originally the assignment was as the original, but eventually I gave the word *animal* only, because there was nothing to be learned from a struggle with a definition.

2. On my reading of this Ordinance the second offence relates to bringing animals home. But it is included in the first prohibition.

3. The third offence applies to both bringing home and herding, but imposes a duty by the words *wilfully or negligently*. If, when animals belonging to one owner are being brought home or herded, and other animals follow behind or alongside, there is a duty to separate them.

4. The proviso is very confusing. Mention of the five miles at first blush leads one to believe that the proviso is an exception to the third offence, where five miles are also mentioned. But the words *in bringing it from the prairie* apparently restrict the proviso to the second offence.

5. This is what I call a condition subsequent.<sup>1</sup> The section with the proviso says in effect that if one drives animals more than five miles he is, at the moment he crosses the five-mile limit, liable to penalties on conviction for an offence, but if he later takes them back he ceases to be liable. (See chapter XIV)

## STUDENTS' RETURNS

### RETURN NO. 1

1. For the purposes of this Ordinance - "cattle" includes a horse or mule. 1

2. (1) A person who—

(a) leads or rides away, or drives off a horse or mule belonging to another person without the consent of that person;

(b) leads away or drives off, while bringing his cattle 2 from the prairie, the horse or mule 3 of another person that is grazing with his cattle; or

(c) wilfully or negligently causes or permits cattle 4 of another person to be driven to a distance greater than 5 miles from the place where such cattle were grazing with his cattle,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars and costs of prosecution, and 5 to imprisonment for a term not exceeding 3 months in default of payment.

(2) Where a person in driving his cattle from the prairie finds it necessary to drive cattle 6 belonging to another person to a distance greater than 5 miles before being able to separate his cattle from among them, he is not guilty of an offence under the Ordinance, if immediately thereafter he drives back the cattle to the place from which he drove them. 7

3. Notwithstanding the provisions of this Ordinance, the owner of any cattle led or ridden away or driven off may institute civil proceedings 8 for damages in respect thereof.

#### COMMENTS

1. This assignment was given before I substituted the one word *animal* for cattle, horses and mules. The original Ordinance was confusing. The first offence mentioned only horses and mules; the second mentioned *animal* (without saying what kind) and dealt only with driving off horses or mules; the third offence mentioned horses, mules and cattle; the proviso said only animal.

We can see from this draft the confusion arising from these terms. The author here has attempted to straighten matters out, but there are still difficulties. Paragraph (a) deals only with horses or mules, as in the original. Why not cattle also?

2. 3. The word *cattle* here, by virtue of the definition, includes horses and mules, but the driving off refers only to horses and mules, grazing with cattle, horses or mules.

4. The original mentions all three kinds of animals; that is accomplished here by the definition. I considered it to be a waste of time to fuss with different animals, as that does little for drafting instruction and detracts from the main objects of the exercise.

5. Usually imprisonment in default of payment is alternative. Here, if a convicted person does not pay he would be liable to imprisonment, but would he, even after serving his term, still be liable to pay the fine?

6. The introduction of the idea of necessity is good, but I would make it objective rather than subjective by saying *if it is necessary*. As written the herder might *find* it necessary in his judgment, but the magistrate might hold that it was not necessary.

7. In my opening remarks I commented on the condition subsequent. In the original it is provided that the herder is not liable to the penalties if he drives the animals back. Although I am not too fond of a provision of this kind, it is sometimes necessary to have something like it. If relief is

granted from penalties, then, although there technically was a violation, but since there are no penalties if the condition is met, there could be no successful prosecution - unless the herder was arrested after he passed the five-mile limit and before he had a chance to bring the animals back, a rather unlikely event. In this draft, the *offence* is mentioned, which means that he becomes guilty when he passes the line and then becomes unguilty after he returns the animals; this strikes me as anomalous.

The usual way, I believe, of dealing with such a situation is to say that it is a defence to a prosecution if the accused proves that he drove the animals back.<sup>2</sup>

The best way of writing this Ordinance, in my opinion, is to write it in regulatory form. As this draft and the original are written, the prosecution would have to be under paragraph (c). If written in regulatory form, as we shall see in my summation at the end of this chapter, duties could be imposed to separate the animals as soon as possible and forthwith thereafter to drive them back. The prosecutions then would be for failure to separate or failure to drive back, rather than a prosecution for driving off in excess of five miles.

8. This gives a statutory right to damages. This section should be a saving provision as in the original, thus leaving any liability for damages to the ordinary law.

## RETURN NO. 2

1. No person shall take, ride or drive off horses or cattle not belonging to him, without the consent of the owner or owners thereof. 1

2. Notwithstanding section 1, 2 any 3 person, in bringing his own horses or cattle from the prairie, may, without the consent of the owner or owners concerned, 4 drive 5 other horses or cattle along with his, where doing so is necessary 6 in order to enable him 7 to separate his animals from among 8 the others; but where he has taken the horses or cattle not belonging to him on a greater distance than five miles before the separation is effected, 9 he shall 10 drive them back at once within a scope of five miles from the place he drove them from. 11

3. Any person who violates this Ordinance is guilty of an offence and is liable, on summary conviction before a justice of the peace, to a fine not exceeding one hundred dollars or, where he fails to pay the fine 12, to a term of imprisonment not exceeding three months; he shall also bear the costs of prosecution. 13

4. A conviction 14 under this Ordinance does not debar the owner of any animal taken, ridden or driven off in violation of section 1 or section 2 from bringing a civil action for damages against the person so convicted.

## COMMENTS

This draft is a second effort and is reasonably good. My comments go mostly to refinement, rather than substance or arrangement.

1. It would be better to write in the singular. Horses and cattle are mentioned because that was the form of the assignment before I finally changed it simply to animals.

2. Section 2 is an exception to section 1. There is a choice here; either section 1 could start with *Except as provided in section 2*, or section 2 could begin with *notwithstanding*. My general tendency in writing a qualified command or prohibition was to begin with *Except*.

3. I would prefer *a* to *any*. This section grants permission to do what would otherwise be prohibited, and the proper word to use is *may*.<sup>3</sup>

The third offence was omitted; perhaps this was an oversight.

4. I do not favour the word *concerned* in this context. *Their owner* would be better, but the whole phrase could be deleted.

5. The accepted verb is *drive off*.

6. I would prefer *if it was necessary for him to do so*.

7. The words *to enable him* could be deleted.

8. *Among* should be deleted.

9. The idea of necessity should be introduced - *where it was necessary to drive off for a greater distance in order to separate them*.

10. The command to separate them should be inserted. Failure to separate or to return would then be prosecuted under section 3 rather than section 1.

11. *Within a scope of five miles from* is vague. It could be replaced by *to*.

12. The usual expression is *in default of payment*.

13. As indicated in earlier exercises costs of prosecution need not be mentioned.

14. This provision saves the right to civil action only if there has been a conviction. The implication is that if there is no prosecution or conviction there is no longer a right to a civil action under the general law.

## RETURN NO. 3

1. A person 1

(a) who without lawful authority 2 takes, rides or drives off any horse or cattle, or

(b) who without lawful authority wilfully or negligently causes or allows any horse or cattle to be driven off for more than five miles from where it was grazing,

is guilty of an offence and upon summary conviction is liable to a fine not exceeding one hundred dollars and to costs, and in default of payment is liable to imprisonment for a term not exceeding three months.

2. Section 1 shall 3 not apply to a person, 4

(a) where an animal belonging to him was grazing on the prairie with other animals;

(b) where in separating his animal from the others he had to drive them for more than five miles from where they were grazing; and

(c) where on the separation of the animals he immediately drove back the others to the place where they were grazing.

3. Nothing in this Act shall 5 prevent the owner of any horse or cattle that has been taken, ridden or driven off without lawful authority from bringing an action for damages under any other law.

#### COMMENTS

1. Section 1 is modified by section 2. The exception ought to be indicated at the very beginning of section 1.

2. The words *without lawful authority* are somewhat vague. Presumably they mean without the consent of the owner, which I would regard as a preferable expression.

The same phrase is repeated in paragraph (b). If the phrase is used it would be better to put it in the opening words.

The second prohibition has been dropped, since it is included in the first.

This section is in penal form. It could easily be converted into regulatory form - *No person shall*.<sup>4</sup>

3. I would say *does* not instead of *shall* not.

4. There is doubt whether (a), (b) and (c) describe three separate situations, each of which would exclude the application of section 1, or whether there is only one situation. It would be better to write the substance of this section in regulatory form as indicated in my summation.

5. I would prefer *prevents* or *shall be construed* to prevent, to *shall prevent*.

#### RETURN NO. 4

1. No person shall take, ride or drive off any animal 1 without the consent of the owner.

2. No person bringing an animal from the prairie shall take or drive off an animal belonging to another that is grazing with his 2 own without the consent of the owner. 3

3. A person bringing an animal from the prairie may notwithstanding s.2 take or drive off an animal belonging to another to a distance of more than five miles

(a) if without doing so he cannot separate his from the others, 4 and

(b) if after doing so he drives them back soon thereafter. 5

4. A person commits an offence under this Act if

(a) he contravenes sections 1, 2 and 3, 6 and

(b) he wilfully or negligently causes or allows an animal belonging to another to be driven with his own for more than five miles from their grazing places. 7

5. Every person who is convicted by a Justice of the Peace for an offence committed under this Act is liable to a fine not exceeding \$100.00 and in addition to pay the cost of the prosecution.

6. Every person convicted under this Act and 8 who defaults in the payment of the fine and cost of the prosecution shall go to prison 9 for a term not exceeding three months.

7. Nothing in this Act stops 10 an owner whose animal has been dealt with contrary to this Act from bringing a civil suit to recover damages in addition to any penalty imposed by this Act. 11

#### COMMENTS

1. This provision seems somewhat empty without the words *belonging to another*.

2. This sounds as though the owner is grazing.

3. As indicated this section could be deleted because it is included in section 1.

4. The positive would be better than the negative - *if it is necessary for him to do so in order to separate them*.

5. This is an impossible condition subsequent. As written, it says that a person may do something now if he does something else later.

6. As written, there is an offence under paragraph (a) only if all three provisions are contravened. This conjunction should be *or*. In any case, section 3 does not impose an obligation or prohibition; it grants permission and a failure to do what is permitted is not a contravention.

7. Paragraph (b) is the third offence. It should be written with the other prohibitions in the form *No person shall*, etc.

8. A slight grammatical error. The *and* should not be there.

9. *Is liable to imprisonment* would be better than *shall go to prison*. In all likelihood he will be taken rather than go.

10. *Prevents* or *shall be construed* to prevent would be better than *stops*.

11. If the right to bring civil action is preserved in addition to any penalty imposed, then is the right preserved if no penalty is imposed?

#### RETURN NO. 5

1. In this Ordinance,

“owner” includes a person having control of an animal. 1

2. A person who

(a) takes away 2 an animal of another person without his consent,

(b) drives off with his animals an animal of which he is not the owner but which he finds grazing in the prairie among his animals, 3 or

(c) when driving off his own animals wilfully or negligently drives off 4 with them an animal of another person for a greater distance than 5 miles from its grazing place,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$100.

3. No liability attaches to a person under section 2 who is unable to separate an animal of another person from among his own before he has travelled a greater distance than 5 miles 5 if immediately upon separation he returns the animal to the place from where he drove it. 6

4. Subject to section 3, 7 nothing in this Ordinance deprives a person of any civil remedy to which he may be entitled.

#### COMMENTS

1. This definition is not needed.

2. Driving off is not taking away.
3. This is a misunderstanding of the second offence.
4. This is the opposite of what is intended. The third offence imposes a duty on a herder to prevent other animals from following or accompanying him; the duty is to drive the other animals off.
5. The separation may take place after five miles and not just before the herder has travelled a greater distance than five miles.
6. Again, a condition subsequent. The herder is not liable now if he does something later.
7. Section 3 does not qualify section 4.

#### RETURN NO. 6

1. Except as permitted by section 2, no person shall take, ride or drive off from the prairie 1 any animal belonging to another person, unless he has his consent.

2. A person may, in driving his own animal off from the prairie, 2 drive off an animal belonging to another person that is grazing with his own 3, without the consent of the person, if he finds it necessary to do so in order to separate the other animal from his own, but he shall not drive the other animal more than five miles from the place where it was grazing.

3. Where the owner of an animal that is grazing on the prairie finds 4 it necessary to drive off with his own animal an animal belonging to another person, but is unable to separate it within five miles of the place where it was grazing, then, it is a defence if he proves that immediately after separating it he drove it back to that place.

4. Every person who violates this Ordinance is guilty of an offence and is liable upon summary conviction to a fine not exceeding one hundred dollars and in default of payment, to imprisonment to a maximum term of three months.

5. Nothing in this Ordinance prevents the owner of an animal taken, ridden or driven off from the prairie 5 from bringing a civil action for damages, in addition to any penalty imposed under this Ordinance.

#### COMMENTS

1. The driving off, etc., is not restricted to the prairie. The third offence has been omitted.

2. It is bringing from the prairie, rather than driving off.

3. Is it the person who is grazing?

4. Not necessarily the prairie.

5. The *in addition to* provision should be dropped, since there might not be any penalty imposed. A provision to this effect should be included so as to make it clear that the remedy in the statute is not exclusive.<sup>5</sup>

#### RETURN NO. 7

1. (1) Except as provided by subsection 1(2), no person shall take, ride or drive off any animal not his own from its grazing place on the prairie 1 without the consent of the owner.

1. (2) Every person who is driving an animal of his own from the prairie 2 may, where it is reasonably necessary, drive with that animal any animal not his own

(a) a distance of five miles or less from its grazing place, or

(b) a distance of more than five miles from its grazing place if the animal is driven back to its grazing place as soon as it is practical to do so 3

without the consent of the owner. 4

2. Every person who violates any provision of this Ordinance is guilty of an offence and is liable upon conviction in a summary way 5 before a Justice of the Peace to a fine not exceeding one hundred dollars, the costs of prosecution and imprisonment for a term not exceeding three months for default in payment of the fine or the costs. 6

3. Nothing in this Ordinance shall be held to prejudice any right, benefit or privilege that any person had prior to the coming into force of this Ordinance. 7

#### COMMENTS

1. 2. Not necessarily just on the prairie.

3. The condition subsequent.

4. These concluding words are not needed. This section is intended to replace the proviso in the original. The third offence is not mentioned.

5. The usual form is summary conviction.

6. Imprisonment for default of payment is usually an alternative and not an additional punishment.

7. This provision would save rights existing before the coming into force of the Ordinance. What is intended to be saved is a right of civil action for things done after the Ordinance comes into force.

### RETURN NO. 8

1. No person shall take, ride or drive off an animal belonging to another without the consent of the owner.

2. Where a person is bringing in his animal from the Prairie 1

(a) he shall not take or drive off the animal of another person that is grazing with his animal; or 2

(b) he shall not cause or allow, either wilfully or negligently the animal of another person to be driven off with his herd for a distance of more than five miles unless it is necessary to do so to separate them from his own herd.

3. Where a person finds it necessary to drive the animal of another more than five miles pursuant to section 2, 3 he shall return the animal to the place from which he drove it.

4. Every person who contravenes a provision of this Ordinance is guilty of an offence and is liable to a fine not exceeding one hundred dollars and in default of payment is liable to be imprisoned for a term not exceeding three months.

5. A civil action for damages remains 4, notwithstanding a prosecution under this Ordinance.

### COMMENTS

1. There should be no paragraphing here. The second offence in the original relates to bringing an animal from the prairie, but the third offence is not confined to that situation.

2. The conjunction should be *and*.

3. Driving an animal more than five miles is not pursuant to section 2. That section does not authorize or require this. Instead, there should be said *in order to separate*, followed by a requirement to separate as soon as possible, and a requirement to return the animals thereafter.

4. Must there be a prosecution before the savings provision can operate?

### RETURN NO. 9

1. No person shall, without the consent of the owner, take, ride or drive off any animal. 1

2. (1) When bringing in his own animal from the prairie, no person shall, without the consent of the owner, take or drive off any other animal that is grazing with his own animal.

(2) Subsection (1) does not apply to a person who, when bringing in his own animal from the prairie, drives, without the consent of the owner, any other animal for five miles or more in order to separate the animals if he at once drives back that other animal to the place from which he drove it. 2

3. When driving a herd of his own animals, no person shall, without the consent of the owner, drive with the herd any other animal to a distance five or more miles from the usual grazing place of that animal. 3

4. Every person who contravenes section 1, 2 or 3 is guilty of an offence and is liable upon summary conviction to a fine not exceeding one hundred dollars and to costs and, in default of payment of the fine, to imprisonment for a term not exceeding three months.

#### COMMENTS

1. Should not *belonging to another* be worked in?

2. Subsection (2) excludes the operation of subsection (1) of this section, but section 1 would still apply. The idea of necessity should be introduced. The idea is that the herder must separate as soon as he can, and may drive the animals for more than five miles if it is necessary to do so in order to separate them.

3. This is intended to be the third offence, but it is causing or allowing that is aimed at, not driving. The saving provision is missing.

#### RETURN NO. 10

1. Subject to section 3, no person shall take, ride or drive off an animal without the consent of the owner. 1

2. Subject to section 3, no person shall, without the consent of the owner, wilfully or negligently cause or allow an animal to be driven with his own animals for more than five miles from the place where it was. 2

3. A person may, without the consent of the owner, cause or allow an animal to be driven with his own animals for more than five miles from the place where it was so far as it is reasonable and necessary to do so in order to separate his own animals from it. 3

4. Where a person, by virtue of section 3, 4 causes or allows an animal to be driven more than five miles from the place where it was, he shall separate his own animals from it as soon as possible and return it to the place from which it was driven. 5

5. Every person who contravenes section 1 or 2 of this Ordinance is guilty of an offence and is liable to a fine not exceeding one

hundred dollars and, in default of payment to imprisonment for a term not exceeding three months.

6. Every person who fails to comply with section 4 is guilty of an offence and is liable to a fine not exceeding one hundred dollars and, in default of payment to imprisonment for a term not exceeding three months. 6

#### COMMENTS

This is a second effort and is a reasonably good draft.

1. This is the first offence. The second one has been omitted.

2. Both sections 1 and 2 begin with *subject to section 3*. This would be a good case for paragraphing; the opening words might be *Except as provided in section 2* and sections 1 and 2 could be made paragraphs (a) and (b).

3. This section grants permission to do what would otherwise be prohibited by section 2; the correct verb is *may*. The idea of reasonableness or necessity is properly introduced.

4. The *by virtue of* phrase could be deleted.

5. This section now has two distinct requirements - to separate and return.

6. There are two penalty sections. The only difference is that in section 5 it is *contravenes* and in section 6 it is *fails to comply*. This fine distinction, if there is one, need not be made. The word *violates* would do for all sections.

#### RETURN NO. 11

1. This Ordinance may be cited as the Grazing Animals Ordinance. 1

2. Every person

(a) when proceeding onto, on, or off 2 a prairie grazing area 3, who takes, rides, or drives off an animal of another person without the consent of that person, or

(b) when returning from a prairie grazing area, who does not drive back to it 4, as soon as he is reasonably able to do so, an animal that accompanies his own animals and that 5 belongs to another person who has not consented to the driving off, taking, or riding of the animal

is guilty of an offence. 6

3. Every person who commits an offence under this Ordinance is liable upon summary conviction before a Justice of the Peace to a fine not exceeding one hundred dollars, and if the person defaults in payment of the fine, he may be 7 imprisoned for a period of not more than three months.

4. This Ordinance shall not affect any civil right or liability of any person.

#### COMMENTS

1. This is a Driving Off Ordinance and not a Grazing Ordinance.

2. This first offence in the original is universal, and would apply with respect to animals on a village street. In any case, a person who is on a *prairie grazing area*, drives off animals, and remains there, would not be caught by the words *proceeding onto, on, or off*.

3. There is no need to manufacture the expression *prairie grazing area*.

4. There is a grammatical flaw here. Paragraph (b) says in effect that while a person is returning from a grazing area he must drive an animal back to it. That is impossible; he cannot go forward and back at the same time.

5. The emphasis here is driving back; there is no mention of the most important obligation, namely, to separate.

6. Paragraphs (a) and (b) deal with entirely different situations and should not be combined.

There is no mention of wilfully or negligently causing or allowing.

Instead of five little concluding words, the opening words should be *Every person is guilty of an offence who*.

7. If he *may* be imprisoned he need not be.

#### RETURN NO. 12

1. (1) Subject to subsection (2), a person who 1

(a) takes, rides or drives off any animal belonging to another party 2 without his consent,

(b) when bringing his own animal from the prairie, takes or drives off the animal of any other party grazing with his own, or

(c) wilfully or negligently causes or allows animals of any other party to be driven with his herd more than five miles from their grazing places,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars and in default of payment of the fine to a term of imprisonment not exceeding three months.

(2) A person is not liable to the fine imposed by this Ordinance

(a) if in bringing his own animal from the prairie he finds it necessary to drive other animals a greater distance than five miles before he can separate his own animal from among them, and

(b) if he at once drives back the other animals to their original place. 4

3. A civil action for damages against any person who takes, rides or drives off an animal according to section 1 may be brought 5 by the party owning the animal in addition to any fine imposed under this Ordinance.

#### COMMENTS

1. This is in the penal form. It could easily be converted to the regulatory form by changing *a person who takes ..... is guilty to no person shall take* and adding a separate penalty section.

2. *Person* here and in paragraphs (b) and (c) would be better than *party*.

3. *If it is necessary* would be better than *if he finds it necessary*.

4. *Original place* is somewhat vague. Better to say *to the place from which he drove them*.

If in regulatory form, it would not be necessary to exempt from penalties. The section could grant permission, but with a duty to separate and return.

5. This gives a right of action instead of merely preserving one.

#### GENERAL COMMENTS

This Ordinance should be in regulatory form. Its object is to regulate the care of animals rather than to create offences. As written, the second offence is included in the first, but was obviously added in order to make an exception by way of a proviso. It would be much easier to write the Ordinance in regulatory form, and then grant permission to do what is set out in the proviso.

The distinction between penal and regulatory forms may have constitutional significance in Canada. Under head 27 of section 91 of the British North America Act, 1867, Parliament is given exclusive power to make

criminal law. Criminal law means criminal law in its widest sense, namely, the prohibition of an act with penal consequences.<sup>6</sup> The subject-matter of the crime can be anything. In the absence of any authority in section 92 of the British North America Act, 1867, the legislatures of the provinces would have no power to impose penalties. However, there is head 15 of section 92, which authorizes the legislatures to impose punishment by fine, penalty, or imprisonment *for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.*

The power of a province to impose punishment is restricted to the enforcement of some other law. Unless, therefore, a provincial offence is for the purpose of enforcing some other law, it would be *ultra vires*. That is why there is risk in providing in a provincial statute that a person is guilty of an offence if he does something. Standing alone, that would be criminal law. If this form is used there would have to be sufficient context in the statute to indicate that the purpose of the offence is to enforce some other law within a subject-matter assigned to the legislatures. In writing provincial laws it is safer to prescribe prohibitions and commands within a provincial subject-matter and then to follow with a penalty for violation.

The distinction between penal and regulatory statutes is also relevant to federal legislation. Parliament could also enact a penalty section to enforce a statute, but the subject-matter must fall within section 91. If not, it would be *ultra vires*.<sup>7</sup> On the other hand, a "pure" crime, not intended to enforce any other law, would be valid under head 27 regardless of its subject-matter.

My practical advice is that in writing a provincial statute the regulatory form - commands or prohibitions - should be used with a penalty for violation; and in writing a federal statute, if the penalty is a crime *per se*, and not for the purpose of enforcing some other law, the penal form should be used - every person who does (or does not do) so and so is guilty of an offence, and the subject-matter could be anything. But if a federal statute falls within any of the classes of subjects in section 91 (other than head 27) then the regulatory form should be used as in the case of provincial statutes. Even if the penal form is used, it might nevertheless be *ultra vires* if its real purpose is to enforce a law in relation to a subject not included in section 91.<sup>8</sup>

The Ordinance here could easily be converted into regulatory form as follows:

#### DRIVING OFF ANIMALS

##### 1. (1) Except as provided in this section

(a) no person shall take, ride or drive off an animal belonging to another without the owner's consent;

(b) no person, when bringing his own animals from the prairie, shall take or drive off the animal of any other person grazing with his own; and

(c) no person shall wilfully or negligently cause or allow animals belonging to other persons to be driven with his animals more than five miles from their grazing places.

(2) A person in bringing his animals from the prairie may take or drive off any other person's animals grazing with his own animals so far as is necessary to separate them from his own animals.

(3) If it was necessary for a person in bringing his animals from the prairie to take or drive off any other person's animals grazing with his own for a distance greater than five miles in order to separate them from his own animals, he shall separate them as soon as it is reasonably possible for him to do so, and shall forthwith thereafter return them to the place from which he took or drove them.

2. Every person who violates this Ordinance is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both.

3. Nothing in this Ordinance prevents any person from bringing a civil action for damages.

In this redraft I have included the second offence in the original, although, as indicated, it is included in the first offence. Permission is granted to do what would otherwise be prohibited, and the separation and returning provisions are set out as separate requirements.

This redraft could be improved by dropping paragraph (b) in subsection 1(1). Subsections (2) and (3) could also be combined into one; that would make for a slightly longer provision, but some duplication of language could be eliminated.

#### DRIVING OFF ANIMALS

1. (1) Except as provided in this section

(a) no person shall take, ride or drive off an animal belonging to another without the owner's consent; and

(b) no person shall wilfully or negligently cause or allow animals belonging to other persons to be driven with his animals more than five miles from their grazing places.

(2) A person in bringing his animals from the prairie may take or drive off any other person's animals grazing with his own so far as is necessary to separate them from his own; but if in so doing it was necessary for him to take or drive off any other person's animals

grazing with his own for a distance greater than five miles in order to separate them from his own, he shall separate them as soon as it is reasonably possible for him to do so, and shall forthwith thereafter return them to the place from which he took or drove them.

2. Every person who violates this Ordinance is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both.

3. Nothing in this Ordinance shall be construed to prevent any person from bringing a civil action for damages.

#### EXERCISES

For students' own comments the following additional students' returns are set out as exercises.

##### EXERCISE NO. 1

1. This Act may be cited as the Driving Off of Animals Act.

2. (1) Subject to subsection (2), no person shall, without the consent of the owner, drive off any animal from the grazing place.

(2) Any person who, when driving off his herd drives off any other animal without the consent of the owner shall not be liable under this Ordinance, if, upon separating the animal from his herd, he immediately returns it to the owner.

3. Any person who contravenes this Ordinance is guilty of an offence and liable on summary conviction before a Justice of the Peace to a fine not exceeding one hundred dollars and in default to imprisonment not exceeding three months.

4. Nothing in this Ordinance shall operate to prevent the owner of any animal from bringing an action for damages in respect of any loss suffered by him.

##### EXCERCISE NO. 2

1. This Ordinance may be cited as the *Driving off of Animals Ordinance*.

2. No person shall take, ride or drive off an animal not belonging to him without the consent of the owner thereof.

3. No person shall wilfully or negligently drive or allow to be driven together with his own animals, animals not belonging to him, more than five miles from their grazing place, unless;

(a) it is necessary to do so in order to separate his own animals from the animals not belonging to him; and

(b) as soon as they are separated, he drives the animals not belonging to him back to their grazing place.

4. Any person who violates this Ordinance is liable on summary conviction to a fine of not more than one hundred dollars and in default of payment of the fine to imprisonment for a period of not more than three months.

### EXERCISE NO. 3

#### DRIVING OFF ANIMALS

1. (1) Subject to section 2, no person shall take, ride, or drive off an animal without the consent of its owner.

(2) Subject to section 2, no person shall wilfully or negligently cause or allow an animal of another person to be driven with his own animals more than five miles from their grazing place.

2. Where a person drives his herd from the prairie, he may drive, so far as necessary, an animal of another person with his herd, but if he drives the animal more than five miles from its grazing place, he shall immediately drive it back to that place.

3. Every person who violates this Ordinance is liable on summary conviction before a Justice of the Peace to a fine not exceeding one hundred dollars, and in default, he is liable to imprisonment for a period not exceeding three months.

### EXERCISE NO. 4

#### AN ORDINANCE FOR DRIVING OFF HORSES AND CATTLE

1. No person shall

(a) take, ride or drive off an animal belonging to another person without his consent or

(b) when bringing his animal from the prairie, take or drive off the animals of any other person grazing with his own or

(c) wilfully or negligently cause or allow animals of other parties to be driven with his herd for more than five miles from their grazing place.

2. Every person who violates any of the provisions of section 1 is guilty of an offence and is liable on summary conviction to a fine not exceeding \$100 and costs and in default of payment to a term of imprisonment not exceeding three months.

3. Notwithstanding sections 1 and 2 where the owner of an animal in bringing it from the prairie finds it necessary to drive other animals for a greater distance than five miles before he can

separate his own animals from them, he is not liable to the penalties imposed in this Ordinance if he immediately drives back the other animals to the place from where he drove them.

4. Nothing in this Ordinance shall prevent the owner of an animal ridden or driven off, from bringing a civil action for damages in addition to the penalty imposed in this Ordinance.

#### EXERCISE NO. 5

##### AN ORDINANCE RESPECTING THE MOVING OF ANIMALS

1. No one shall cause an animal that is owned by someone else to be moved from its place of grazing without the consent of the owner of that animal.

2. No one shall negligently or intentionally allow his animals while grazing to move an animal that is owned by someone else a distance of more than five miles.

3. Notwithstanding sections 1 and 2, a person who is moving his own animals and causes an animal that is owned by someone else to be moved more than five miles from its place of grazing shall not be in contravention of this Act, if

(a) it was necessary to move the animals before they could be separated, and

(b) the person moving the animals returns the animal owned by someone else to its place of grazing as soon as possible.

4. Any person who contravenes this Ordinance is guilty of an offence punishable upon summary conviction, and upon conviction by a Justice of the Peace is liable to a fine not exceeding one hundred dollars plus costs and in default of payment is liable to imprisonment for a term not exceeding three months.

5. Nothing contained in this Act is to be construed as a bar to any civil action.

## CHAPTER NOTES IX

1. Comp. Leg. 40.
2. Leg. F. & P. 251.
3. Comp. Leg., 10.
4. Leg. F. & P. 225.
5. Const. Stat., 100-102.
6. *Proprietary Articles Trade Association v. A.G. of Canada* [1931] A.C. 310, 324.
7. See e.g. *A.G. for Ontario v. Reciprocal Insurers*. [1924] A.C. 328
8. See note 5.

## CHAPTER X

### NEWSPAPERS

This assignment illustrates the effect on drafting of the principle that the law is always speaking. Also, there are some ambiguities, a flaw in section 3, and there are difficulties in handling the penalty provisions.

#### AN ORDINANCE RESPECTING NEWSPAPERS

1. In this Ordinance "newspaper" means: Any paper containing public news intelligence or occurrences, or any remarks or observation thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers, and any paper printed in order to be distributed and made public weekly or oftener, or at intervals not exceeding twenty-six days and containing only, or principally advertisements. 1

2. It shall be the duty 2 of the proprietor, or proprietors, 3 of the editor or editors and of the business manager and of each of them of every newspaper published in the Yukon Territory 4, to file with the clerk of the Territorial Court of the Yukon Territory within one month from the date of the passing of this Ordinance, a declaration under oath or affirmation (in case where by law affirmation is allowed) 5 setting forth the name in full of the proprietor or proprietors, editor or editors, and business manager of such newspaper, 6 his nationality, both by birth and allegiance, the place of publication of such newspaper, and the name or title under which such newspaper is published, and any proprietor, editor or manager neglecting 7 to comply with the provisions of this Ordinance shall, upon summary conviction, before a Justice of the Peace, be liable to a fine not exceeding five hundred dollars and not less than fifty dollars for each day during which such neglect continues. 8

3. In the case of newspapers to be hereafter 9 established in the Yukon Territory, the declaration mentioned in the second section 10 of this Ordinance shall be filed with the clerk of the Territorial Court before such newspaper is published and each and every, the proprietor or proprietors, editor or editors, and business manager of such newspaper shall upon summary conviction 11 before a Justice of the Peace, be liable to a fine not exceeding five hundred dollars and not less than fifty dollars and each issue of such newspaper shall be deemed to constitute a fresh offence against the provisions of this Ordinance. 12

4. Upon every change in the proprietorship, editorship or management of any newspaper, the declaration mentioned in the second section of this Ordinance shall be filed 13 under a like penalty in case of default, as in the said second section provided.

5. The clerk of the Territorial Court shall be entitled **14** to receive from the person filing the declaration above-mentioned a fee of \$5, and it shall be the duty of the said clerk **15** to send to the Commissioner of the Yukon Territory a copy of such declaration forthwith after the filing thereof.

#### COMMENTS

1. The definition of newspaper was included in the assignment originally handed out, but in the redrafting of the Ordinance after discussion students were told they could omit it. There is an ambiguity in the definition that I wanted students to recognize. Once we had discussed the definition there was no point in trying to evolve a new definition. There are definitions of newspapers in various statutes of every jurisdiction and they would have to be looked at before writing a new one.

The ambiguity is in the second branch of the definition. It could be read as

#### A

any paper printed in order to be distributed and made public

(a) weekly or oftener, or

(b) at intervals not exceeding twenty-six days and containing only, or principally advertisements

Or it could be read

#### B

any paper printed in order to be distributed and made public

(a) weekly or oftener, or

(b) at intervals not exceeding twenty-six days

and containing only, or principally advertisements.

If we read it as in A, then the quality or nature of the paper is undefined; it would include any paper - church bulletins, weather reports, stock market reports, etc. The Ordinance is clearly aimed at certain kinds of papers, namely those that may influence public opinion by news or advertising.

On the other hand, if we read it as in B, then the words "weekly or oftener" are redundant, because that is an interval not exceeding twenty-six days.

One should try to give meaning to all the words of a statute, but if the choice is between an interpretation without object, and one that results in tautology, the latter would doubtless be chosen.

This is an illustration of how the re-writing of a provision (as discussed in chapter IV) can assist in understanding it.<sup>1</sup>

2. The form *it shall be the duty of* has now given way to the simple *shall*.

3. It is not necessary to mention both singular and plural.

4. Reading sections 2 and 3 it is clear that the intention was that section 2 should apply only to newspapers being published when the Ordinance was enacted, and section 3 to those established thereafter. However, since the law is always speaking, section 2 by its terms would apply to every newspaper that first began publishing after the passing of the Ordinance.

5. Evidence Acts now permit affirmations.

6. Does each file for himself only, or for all? I took the position that each could file only for himself, because a deponent could not swear to the name or nationality of another person.

7. *Who neglects* would be better than *neglecting*. The word *neglecting* rather implies that the penalty is exigible only while the neglect continues.

8. It is not too clear what the fine is. I read the section as meaning that there is a per diem fine of not less than fifty and not more than five hundred dollars. Others read it as meaning a fine of not more than five hundred dollars and, in addition, a per diem fine of not less than fifty dollars; this interpretation could not be right because there would then be no maximum per diem fine.

9. The word *hereafter* should not be used to refer to the time of the enactment of a statute. Since the law is always speaking, there could never be at any moment of time, a newspaper *hereafter established* (i.e. after the reading of the statute).

10. There is a minor flaw here. Section 2 requires that the declaration should state the name or title under which the newspaper *is published*. Those words cannot apply to a newspaper that is not yet being published.

11. There is an omission here. The offence is not mentioned. Summary conviction for what?

12. How can an issue (i.e. a piece of paper) be an offence?

13. No time limit is mentioned. And it is hardly correct to say that a declaration is filed *under a penalty*. Does each file for himself only, or for all?

14. I would prefer to say simply that a fee is payable.

15. It is enough to say that the fee shall be sent to the Commissioner, without specifically prescribing a duty.

## STUDENTS' RETURNS

### RETURN NO. 1

1. This Ordinance may be cited as the Newspapers Ordinance.

2. In this Ordinance

"newspaper" means any paper 1

(a) containing public news intelligence or occurrences or any remarks or observation thereon,

(b) printed for sale and published periodically or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two issues of the paper, parts or numbers of the paper, and

(c) printed in order to be distributed and made public weekly or oftener or at intervals not exceeding twenty-six days, and containing only or partly advertisement.

3. (1) Every proprietor, editor or 2 business manager of every paper published in the Territory 3 shall, within one month from the date 4 of commencement of this Ordinance, file with the clerk of the Court a declaration under oath or affirmation setting forth

(a) the name and address in full of the proprietor, editor and manager of the newspaper,

(b) his 5 nationality both by birth and allegiance, and

(c) the place of publication of the newspaper and the name and title under which the newspaper is published.

(2) Every proprietor, editor or 6 business manager of any newspaper that is established on or after the commencement of this Ordinance shall, before he 7 publishes the newspaper, file with the clerk of the Court a declaration setting forth the facts mentioned in paragraphs 3(1)(a) and (b). 8 A declaration filed pursuant to this subsection shall also set forth the place of publication of the newspaper and the name and title under which the newspaper will be published. 9

(3) Where any change occurs in the proprietorship, editorship or management of a newspaper and a new proprietor takes over or a new editor or business manager is appointed 10, the new proprietor, editor or business manager, as the case may be 11, shall, within one month of his becoming such proprietor, editor or business manager, file with the clerk of the Court the declaration mentioned in subsection (1).

4. (1) Any person who violates subsection (1) or (3) of section 3 commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars, and if the offence for which he is convicted is continued **12** he is liable to a fine of not less than fifty dollars for every day on which the offence is so continued. **13**

(2) Any person who violates subsection (2) commits an offence and is liable on summary conviction to a fine of not less than fifty dollars and not exceeding five hundred dollars, and each publication of the newspaper shall be deemed to constitute a fresh offence until subsection (2) is complied with. **14**

5. (1) Every person who files a declaration shall pay to the clerk of the Court a filing fee of five dollars.

(2) The clerk of the Court shall forthwith transmit a copy of the declaration filed pursuant to section 3. **15**

#### COMMENTS

1. There is doubt whether the *and* connecting (b) and (c), and implied between (a) and (b), is joint or several. Does the definition describe three different *newspapers*, or only one?<sup>2</sup>

A newspaper must be understood to be a periodical of some kind; hence paragraphs (a) and (b) must be read together to describe one paper. But then (c) must also be added, but (c) and (a) are inconsistent.

The ambiguity could be removed by re-casting the definition, either with or without paragraphs, to say in effect that a *newspaper* is a paper *that contains, etc. and is printed for sale*, and a paper *that is printed in order to be distributed, etc.*

2. This *or* means that a declaration filed by only one of the three named persons satisfies the requirement. It should be *and*, but there still remains the question whether each files for himself only, or for all.

3. This description would include newspapers established after the commencement of the Ordinance.

4. I prefer to say the *day* rather than *date*, on which an enactment comes into force. But if *commencement* is used, then no reference to *day* or *date* is needed. I normally use *commencement*, since it is defined in the Interpretation Act. However, if there are two references to this time, then I would use *day*. Thus, if the section referred first to newspapers *being published on the day* this Ordinance comes into force, then the time could be expressed as one month after *that day*.

5. Does this *his* refer only to the one person filing the declaration or to all three?

6. See comment 2.

7. Who is this *he*? It would be better to word this in the passive - *before the first issue is published*; or *before publication of the first issue*. Identity of the person is immaterial.<sup>3</sup>

8. The ambiguity mentioned in comment 2.

9. This student noticed the difference between a newspaper being published at the commencement of the Ordinance and one that began publishing after. However, a separate sentence is not needed. A comma at 8 followed by *and* could replace the first eleven words of this second sentence.

10. There may not be a new one appointed. The business manager might die or resign and the proprietor might take over his duties.

The question arises here too whether each files for himself or for all.

My instructions for the redraft were that in the event of a change, either by addition or subtraction, each of the named persons should be required to file a declaration for himself. My justification for this instruction was that the officials of the newspaper could be discovered at once by looking only at the 1st file,<sup>4</sup> and it would not be necessary for the clerk of the court or the Commissioner to search all the files from beginning to end to discover the additions and subtractions.

11. *As the case may be* could be omitted.

12. The quantum of the fine is not correct. As indicated in my preliminary comments the fine is a per diem fine of not less than fifty dollars and not more than five hundred; it is not five hundred plus not less than fifty for each day. See subsection (2) of this section.

13. The description of the per diem fine comes close to what it should be, but in my opinion is not quite correct. The offence is ephemeral. With the word *violate* in the first line, the concluding words could be *for each day during which the violation continues*. The words *defaults in complying with* might be better; then continuation of the default could be used at the end. See my redrafts.

14. There is a little problem here with the word *publication*. In the earlier sections, *publication* means being in business, but here it means printing an edition. I think it would be better to measure the fine by referring to each issue published during the period of violation (default).

In my redrafts I have used the per diem amount only as the measure of one fine, and not as a separate fine for each issue. As originally written the publication of each issue would have to be alleged in the complaint or information as an offence; that would provide opportunity for error. If there is only one offence, with a per diem measure of the fine, then there would need to be only one charge.

15. Reference to the Commissioner was inadvertently omitted.

RETURN NO. 2

1. In this Ordinance "newspaper" means any publication that

(a) contains reports of or comments on public news intelligence or occurrences and is published periodically or in parts or numbers for sale to the public, or

(b) contains solely or principally advertisements and is printed for distribution to the public, and

that is printed or published at intervals not exceeding twenty-six days. 1

2. (1) Before any newspaper commences 2 publication in the Yukon Territory, each proprietor, editor and business manager of the newspaper shall file with the Clerk of the Territorial Court a declaration under oath or affirmation setting forth the following information,

(a) his name,

(b) his nationality by birth and by naturalization,

(c) the name of the newspaper, and

(d) the place at which the newspaper is published. 3

(2) Every person who becomes 4 a proprietor, editor or business manager of a newspaper that is published in the Yukon Territory shall file with the Clerk of the Territorial Court the declaration required 5 by subsection (1) within thirty days of his becoming the proprietor, editor or business manager.

(3) There is 6 a fee of five dollars payable to the Clerk of the Territorial Court upon filing with him any declaration required by this Ordinance. 7

3. The Clerk of the Territorial Court shall send a copy of any declaration filed under this Act to the Commissioner of the Yukon Territory immediately after it has been filed.

4. (1) Every person who fails to comply with subsection 2(1) of this Ordinance is guilty of an offence and liable on summary conviction by a Justice of the Peace to a fine of not more than five hundred dollars and not less than fifty dollars, and he shall be deemed to have committed a fresh offence each time an issue of the newspaper is published. 8

(2) Every person who fails to comply with subsection 2(2) of this Ordinance is guilty of an offence and is liable on summary conviction by a Justice of the Peace to a fine for every day that the failure continues of not more than five hundred dollars and not less than fifty dollars. 9

5. (1) Where a newspaper has commenced publication in the Yukon Territory before this Ordinance comes into force, each proprietor, editor and business manager of the newspaper shall file with the Clerk of the Territorial Court the declaration required by subsection 2(1) within thirty days of the coming into force of this Ordinance.

(2) Every person who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction by a Justice of the Peace to a fine for each day that the failure continues of no more than five hundred dollars and not less than fifty dollars. 10

#### COMMENTS

1. The concluding words are designed only to avoid repetition of the intervals. I would prefer to mention the intervals in each paragraph. In any case, the *and* at the end of (b) should be part of the concluding words, and the last *that* omitted.

2. The order of the provisions has been changed. The most important provision is made the last section. I would reverse sections 2 and 5. It is not the newspaper that commences publication.

3. In this draft it is clear that each files for himself only. However, the concluding words *is published* do not fit a newspaper that has not yet commenced publication. *To be published* would be a better fit.

4. There might not be a new one.

5. The declaration is *described* in subsection (1).

6. I would prefer *A fee of five dollars is payable*.

7. This subsection applies to the whole Ordinance and not just to subsection (1). It should be combined with section 3.

8. There is no reference to the period of failure or default; as written, each issue forever would be an offence.

9. Here we have *fails to comply* and *failure continues*. A good connection.

10. See comment 9.

#### RETURN NO. 3

1. In this Ordinance 1

(1) "declaration" means a declaration 2

(a) that is made under oath, or by affirmation, by the owner, editor or business manager of a newspaper,

(b) that contains the full name, the place of birth and the place of citizenship of every owner, editor and business manager of that newspaper, and

(c) that contains the place of publication and the name under which that newspaper is published.

(2) "newspaper" means any printed matter published periodically

(a) that has 3 intervals of less than 27 days between publications,

(b) that has, in the case of a publication to be sold to the public, a subject matter that deals with knowledge, 4 public events or editorial comments, and

(c) that has, in the case of a publication not to be sold to the public, a subject matter that deals entirely or primarily with advertisement. 5

2. (1) Subject to subsection (2), the owner, editor and business manager of every newspaper 6 shall file a declaration, with the clerk of the Territorial Court of the Yukon Territory, within one month of the coming into force of this Ordinance. 7

(2) The owner, editor and business manager of every newspaper that comes into existence after the coming into force of this Act 8 shall file a declaration, with the clerk of the Territorial Court of the Yukon Territory, before 9 the newspaper commences publication.

(3) When the information contained in a filed declaration changes 10, the owner, editor and business manager of the newspaper shall file a changed declaration 11, with the clerk of the Territorial Court of the Yukon Territory, within 10 days of the change.

(4) A person filing a declaration pursuant to this section shall pay a filing fee of \$5, at the time of filing, to the clerk of the Territorial Court of the Yukon Territory. 12

3. Everyone who contravenes this Act is guilty of an offence punishable upon summary conviction, 13 and

(a) upon conviction by a Justice of the Peace for an offence under subsection 2(1), is liable to a fine not exceeding \$500 and not less than \$50 for each day 14 that the declaration mentioned in that subsection remained unfiled 15 in contravention of it,

(b) upon conviction by a Justice of the Peace for an offence under subsection 2(2), is liable to a fine not exceeding \$500 and not less than \$50 for each day that there was a newspaper published while the declaration mentioned in that subsection remained unfiled in contravention of it, and

(c) upon conviction by a Justice of the Peace for an offence under subsection 2(3), is liable to a fine not exceeding \$500 and not less than \$50 for each day that the declaration mentioned in that subsection remained unfiled in contravention of it.

4. The clerk of the Territorial Court of the Yukon Territory shall send a copy of any declaration filed under this Ordinance to the Commissioner of the Yukon Territory.

#### COMMENTS

1. The designation of the divisions in this section is not in accord with federal or provincial systems in Canada. The (1) and (2) should be (a) and (b), and the (a) (b) (c) should be (i) (ii) (iii).

2. The term *declaration* need not be defined. It would be better to describe the content of the declaration in a substantive provision, and if there needs to be a reference to it in another provision, that could easily be done by *as described in*.

Moreover, as we shall see in comment 6, this definition does not do what it is intended to do.

3. I do not like the possessive *has* in paragraphs (a), (b) and (c). In the case of (a), for example, it is hardly correct to say that printed matter *has* intervals, instead of saying *published at intervals*.

4. This is too wide. Stock market reports, weather reports, subscriptions to concert programmes, for example, all *deal with* knowledge.

5. Are the *ands* joint or several?

6. Suppose that the owner makes a declaration for himself in triplicate, and the owner, editor and business manager each file that declaration. This satisfies the definition - each has filed a declaration made *by the owner, editor or business manager*; since these persons are named in the alternative, one will do.

7. This subsection would by its terms apply to all newspapers whether established before or after the coming into force of the Ordinance.

8. A minor lapse here. In subsection (1) it is *Ordinance*, but here and in section 3 it is *Act*. Most of the exercises were called Ordinances; the term *Acts* should therefore not be used.

9. A slight difficulty here with *publication*. In one sense, a newspaper could begin publication before an edition rolls off the presses. And it is not the newspaper that does the commencing. It would be better to use another word and the passive - before an issue of the newspaper is published - i.e. made public.

10. It is not the information that changes; it is the ownership, editorship or management.

11. A new declaration is not a *changed* one - i.e. an altered one.

12. This subsection should be at the end with section 4.

13. I think it would be better to have separate penalty sections rather than try to write them as one sentence. There are two per diem penalties and one per issue penalty. The two per diem penalties might be combined, but I would prefer to have the per issue penalty as a separate provision.

14. There is an ambiguity here. Is it \$500, plus not less than \$50 for each day, or is it from \$50 to \$500 for each day?

15. To say that a declaration remains unfiled rather implies that there is one but it is not filed. The expression used here is not the equivalent of *is not filed*.

This expression is also used in paragraphs (b) and (c).

All of the penalty provisions in this Ordinance could be improved by introducing the idea of continuation of a default.

#### RETURN NO. 4

1. (1) In this Ordinance, "newspaper" means a newspaper that is published in the Territory and includes any paper that contains only or principally advertisements. 1

(2) This Ordinance does not apply to any paper or newspaper that is published at intervals exceeding twenty-six days. 2

2. (1) Every proprietor, editor and business manager of a newspaper shall, upon his appointment 3 or before the expiration of one month after the coming-into-force 4 of this Ordinance, whichever last occurs, file a citizenship declaration 5 with the Clerk of the Territorial Court and pay him a filing fee of five dollars. 6

(2) Every citizenship declaration shall be made under oath or upon affirmation and shall set out

(a) the full name of the declarant,

(b) his nationality by birth and by allegiance,

(c) the position he holds with the newspaper,

(d) the full name of every other proprietor, editor and business manager of the newspaper,

(e) the name or title under which it is published, and

(f) the place where it is published.

3. (1) Every proprietor, editor or business manager of a newspaper who is required to file a citizenship declaration before the

expiration of one month after the coming-into-force of this Ordinance and neglects to do so is guilty of an offense and is liable on summary conviction before a Justice of the Peace to a fine, for each day that his neglect continues 7, of not less than fifty dollars nor more than five hundred dollars.

(2) Every proprietor, editor or business manager of a newspaper who is required to file a citizenship declaration upon his appointment and neglects to do so is guilty of a separate offense for each issue of the newspaper published after his appointment and is liable on summary conviction before a Justice of the Peace to a fine, for each offense, of not less than fifty dollars nor more than five hundred dollars. 8

4. Upon the filing of a citizenship declaration, the Clerk of the Territorial Court shall send a copy of it to the Commissioner.

#### COMMENTS

1. This is not a definition of what a newspaper is, except as to place of publication.

2. The Ordinance applies to proprietors, editors and business managers. This subsection should be incorporated as part of the definition of newspaper.

3. This section attempts to combine into one provision sections 2, 3, 4 and 5 of the original. The attempt has flaws. By its terms it applies in respect of newspapers established before or after the coming into force of the Ordinance. The words *upon his appointment* (intended to replace section 5 of the original) are too strict. If a newspaper is established two months after the Ordinance, then the appointments of proprietor, editor and business manager would be the later event and they would be required to file the declarations immediately. Suppose an editor of an existing newspaper is appointed twenty-eight days after the commencement of the Ordinance; he would have only two or three days to file the declaration. Also, the case where a person dies or retires and is not replaced would not be covered.

4. This is normally not hyphenated.

5. The declaration does not need a label. In any case, it is more than a citizenship declaration.

6. This should be at the end along with section 4.

7. The introduction of the idea of neglect is good.

8. This subsection is intended to deal with a change in ownership, etc., but, as indicated in comment 3, it does not apply in the case where there is a change without a new appointment. Also, as the provision stands, the

defaulting person would forever be guilty of an offence for every issue published after the default, even though he filed a declaration.

#### RETURN NO. 5

##### 1. In this Ordinance

"newspaper" means any printed publication that is published in the Yukon Territory periodically at intervals not exceeding twenty-six days between issues, that 1 is sold or distributed to the public and that 2 contains news, observations on the news, other items of public interest or either only advertisements or partially advertisements;

"declaration" means a declaration made under oath by a proprietor of, an editor of or a business manager 3 of a newspaper published in the Yukon Territory stating 4 his name, his country of birth, his country of citizenship, the name of his 5 newspaper and the place of 6 publication of his newspaper.

2. Every person who on the day this Ordinance comes into force is a proprietor of, an editor of or a business manager 7 of a newspaper shall within one month of such 8 day file a declaration with the Clerk of the Territorial Court. 9

3. Every person who becomes a proprietor of, an editor of or a business manager 10 of a newspaper that is in existence on the day this Ordinance comes into force shall within one month from the day he becomes the proprietor, editor or business manager file a declaration with the Clerk of the Territorial Court.

4. Every person who becomes a proprietor of, an editor of or a business manager of 11 a newspaper that is established after the day this Ordinance comes into force shall before such 12 newspaper is first published file a declaration with the clerk of the Territorial Court.

5. Every proprietor of, editor of or business manager of a newspaper

(a) who violates section 2 or 3 is guilty of an offence and is liable to a fine not exceeding five hundred dollars and not less than fifty dollars for each day a declaration is not filed 13 pursuant to section 2 or 3, or

(b) who violates section 4 is guilty of an offence, and is guilty of a separate offence each time he publishes an issue of the newspaper without having filed his declaration, 14 and is liable to a fine not exceeding five hundred dollars and not less than fifty dollars for each offence. 15

6. Every person who files a declaration pursuant to section 2, 3 or 4 shall pay a filing fee of five dollars and no declaration shall be accepted by the Clerk of the Territorial Court until the fee is paid.  
16

7. The Clerk of the Territorial Court shall forthwith send to the Commissioner a copy of any declaration filed pursuant to section 2, 3 or 4.

#### COMMENTS

1. 2. I would drop the *thats* and let the first *that* is govern - *printed publication that is published ..... sold or distributed ..... and contains.*

3. This definition is not needed.

There are too many *ofs* here. It would be smoother to say *proprietor, editor or business manager.*

4. I prefer *setting forth*. Some of the particulars are hardly *statements*.

5. The *newspaper* instead of *his*.

6. If *its* were inserted the last three words could be dropped.

7. See comment 3.

8. *That* instead of *such*.

9. The flaw in inserting a definition of *declaration* here again is that it contains substantive material that is not incorporated in this section. The person in section 2 is not tied to his declaration. The definition is general, but the section is specific. Thus, the editor of newspaper A who files a declaration made by the editor of newspaper B would comply with the Ordinance.

10. See comment 3. Also, this section is designed to reproduce section 5 of the original, but it does not include the case where there is a change but no new appointment is made.

11. See comment 3.

12. It would be better to introduce *an issue*.

13. It would be better to introduce the idea of a period of default.

14. Also, as written, could it mean that if an issue is published after the declaration is filed, this issue was published *without having filed his declaration*. The word *without* implies concurrent action.

15. It would be better to measure the fine by the number of issues published during the period of default.

16. The Clerk would probably, without direction, refuse to accept the declaration if the fee were not paid on filing.

#### RETURN NO. 6

In this Ordinance

“newspaper” includes

(a) periodicals containing news, occurrences, remarks or observations thereon published as a whole or published in parts at intervals not exceeding twenty-six days and printed for sale;

(b) any paper containing advertisements only or principally advertisements published at intervals not exceeding twenty-six days, for distribution weekly or oftener.

1. (1) Every proprietor, editor and business manager of every newspaper newly 1 established shall before its publication 2 file with the clerk of the Territorial Court, a statutory declaration 3 setting out the declarant's name, his nationality, his place of birth and his allegiance, the place of publication of the newspaper and its name or title. 4

(2) Every person who fails to comply with subsection (1) commits an offence and on summary conviction before a Justice of the Peace is liable to a fine not exceeding \$500 and not less than \$50.

(3) Each issue of a newspaper published in contravention of subsection (1) 5 is deemed to constitute a new offence.

2. (1) Where a newspaper is in existence 6 the declaration shall be filed within one month next following the commencement of this Ordinance, but where there is a change of the proprietor, the editor or the business manager, then it shall be filed at the time of the change. 7

(2) Every person who fails to comply with section 2 commits an offence and on summary conviction before a Justice of the Peace is liable to a fine not exceeding \$500 and in addition a sum not less than \$50 for each day that the offence 8 continues.

3. The declaration shall be filed with a fee of \$5 9 and the clerk shall immediately afterwards transmit a copy of the declaration to the Commissioner.

#### COMMENTS

1. Every newspaper was at one time *newly* established. This section was intended to apply to newspapers established after the commencement of the Ordinance. Sections 1 and 2 should be reversed.

2. This should be *before an issue of the newspaper is published*.

3. The word or words to be used here - *oath, affirmation, statutory declaration* - will depend on local Evidence Acts.

4. It is clear that each files for himself.

5. It is the failure to file, and not the publication, that is in contravention of subsection (1).

6. Every newspaper is in existence whenever it was established. Words to the effect - *at the commencement of this Ordinance* - should be inserted.

7. What follows *but* is here set out as an alternative to the first requirement. It should be set out in a separate section as an additional requirement.

8. Having said *fails* at the beginning the word *failure* would be better than *offence*.

9. The word *with* can be ambiguous. It might mean *accompanying* or *by means of*. Better to say that a fee is payable to the clerk of the Court.

#### RETURN NO. 7

1. This Act may be cited as the Newspapers Ordinance.

2. In this Act,

“newspaper” means any printed paper containing news, commentaries or advertisements, offered for sale or distribution and published periodically or in parts, at intervals not exceeding twenty-six days between the publication of each issue; 1

“proprietor” includes the editor or business manager of any newspaper or any person acting in such capacity. 2

3. Every proprietor of any newspaper published in the Yukon Territory 3 shall, within one month after the commencement of this Ordinance, file with the clerk of the Territorial Court a declaration under oath setting forth:

(a) the name in full of the proprietor, 4

(b) the nationality of the proprietor, both by birth and by allegiance,

(c) the place of publication of the newspaper,

(d) the name under which the newspaper is published. 5

4. (1) Where any newspaper is established after the commencement of this Ordinance, the proprietor shall, before the first publication of the newspaper 6, file the declaration described in section 3 7 and each issue of a newspaper published before compli-

ance with this section, shall be deemed to constitute a new offence under this Ordinance. 8

(2) Where any change occurs in the proprietorship of a newspaper, a new declaration 9 shall be filed with the clerk of the Territorial Court.

5. The clerk of the Territorial Court shall collect 10 a fee of five dollars from the person filing a declaration under this Ordinance and shall forthwith send a copy of the declaration to the Commissioner of the Yukon Territory.

6. Any proprietor who fails to comply with the provisions of this Ordinance shall, upon summary conviction before a Justice of the Peace, be liable to a fine not exceeding five hundred dollars and to fifty dollars for each day of non-compliance. 11

#### COMMENTS

1. Advertising papers are lumped with newspapers. They are two separate things and should be dealt with separately. Any paper consisting of one per cent advertising and the rest not news would be caught.

2. This definition leads to the difficulty mentioned in comment 4 below.

3. This would apply to all newspapers whenever established.

4. Reading this paragraph along with the definition of proprietor, an editor would satisfy the Ordinance if he filed another authenticated copy of the declaration of the business manager.

5. This draft was apparently intended to require all to file for all.

6. It would be better to say *before publication of the first issue of the newspaper*.

7. The description in paragraph 3(d) does not fit a newspaper that is not yet being published.

8. As indicated earlier, how can an issue (i.e. a thing) constitute an offence?

9. What kind of a declaration shall be filed by whom?

10. This provision ought not to take the form of prescribing duties on the Clerk.

11. This section does not fit sections 3 and 4 too well. In the case of section 3 there is only one day of non-compliance, namely, the thirty-first day. In the case of section 4, suppose that a newspaper is established and thirty days later the first issue appears but the declaration is not filed until the thirty-second day. Are there two days of non-compliance or thirty-two?

As indicated earlier there should be a reference to a period of failure or default.

RETURN NO. 8  
*Definition*

1. In this Ordinance

“newspaper” means 1

(a) a paper that contains

(i) public news intelligence or public news occurrences, or

(ii) any remarks or observation on the items of subparagraph (i) and

that 2 is printed for sale and published

(iii) periodically, or

(iv) in parts or numbers,

at intervals not exceeding twenty-six days between the publication of two papers, parts or numbers, or 3

(b) a paper that contains only or principally advertisements and that 4 is printed for distribution and published

(i) weekly or oftener, or

(ii) at intervals not exceeding twenty-six days.

*Particulars to file.*

2. (1) Within one month from the date of the passing of this Ordinance, each proprietor, and 5 editor, and business manager, of every newspaper that is 6 published in the Yukon Territory at the date of this Ordinance 7, shall file a declaration pursuant to subsection (2). 8

(2) The declaration pursuant to subsection (1), filed with the clerk of the Territorial Court of the Yukon Territory shall 9

(a) be under oath by affirmation (in case where by law affirmation is allowed) and

(b) set forth

(i) the name in full and

(ii) the nationality, by birth and allegiance,

of each proprietor, and editor, and business manager, of the newspaper, and

(iii) the place of publication of the newspaper, and

(iv) the name or title under which the newspaper is published.

(3) In the case of newspapers 10 that are established in the Yukon Territory, after this Ordinance 11, each proprietor and editor, and business manager, of every 12 newspaper, shall file, before the publication 13, a declaration pursuant to subsection (2). 14

(4) Upon every change in the proprietorship, or editorship, or management, of a newspaper that is published in the Yukon Territory, a declaration pursuant to subsection (2) shall be filed. 15

#### *Fees*

3. (1) The clerk of the Territorial Court is entitled to receive a fee of five dollars from the person who files a declaration pursuant to subsection 2(2). 16

(2) The clerk, referred to in subsection (1), shall send to the Commissioner of the Yukon Territory, a copy of a declaration pursuant to subsection 2(2), forthwith after the filing of that declaration. 17

#### *Penalty*

4. Each proprietor, or editor, or business manager, of a newspaper, is, upon summary conviction 18 before a Justice of the Peace, liable to a fine not exceeding five hundred dollars and not less than fifty dollars

(a) for each day during which he neglects to comply with the provisions of subsections 2(1) or (4), or

(b) for each issue of a newspaper during which he neglects to comply with the provisions of subsection 2(3); each issue constituting a fresh offence. 19

#### COMMENTS

This is not too bad a draft, but it is over-paragraphed and requires some refinement in language.

1. In this definition all the subparagraphing could be omitted.
2. 4. These *thats* should be deleted.
3. Either *or* or *and* could be used, but I would prefer *and*.
5. The *and* should be omitted.

6. *Being published* would be better than *that is*.

7. Either at the commencement of this Ordinance or on the day this Ordinance comes into force.

8. The declaration is not filed pursuant to subsection (2). That subsection only describes the declaration; it is to be filed pursuant to subsection (1). The reference to the declaration should be *as described in subsection (2)*.

9. It would be better to combine subsections (1) and (2) by saying *file a declaration under oath setting forth* and then list the contents in paragraphs or without paragraphs.

10. The singular *a newspaper established* would be better.

11. See comment 7.

12. If the singular is used, this could be *the* newspaper.

13. Add *of the first issue*.

14. 15. 16. See comment 8.

17. Subsections (1) and (2) can easily be combined into one subsection.

18. Summary conviction for what?

19. There cannot be neglect to comply during an issue.

#### RETURN NO. 9

1. In this Ordinance—

“newspaper” means any paper containing literary matter 1, news, or occurrences, and any remarks, or observations thereon, that is printed for sale and published periodically, or in parts, or numbers, at intervals not exceeding twenty-six days between the publication of two such papers, parts or numbers, and it includes any printed publication containing exclusively or principally advertisements, that is issued at intervals not exceeding twenty-six days, or at weekly or shorter intervals.

2. (1) The proprietor, editor, and business manager of every newspaper that is published in the Yukon Territory, shall cause to be filed 2 with the Clerk of that territory 3, within one month from the date of the coming into force of this Ordinance, a declaration under oath or solemn affirmation giving the following particulars -

(a) the name in full, the nationality by birth, and the nationality by allegiance where applicable, of each one of them, and

(b) the name or title under which the newspaper is published and its place of publication; 4

(2) The proprietor, editor, and business manager of every newspaper shall, upon any change arising in the particulars given 5 in the above 6 declaration, cause to be filed with the Clerk of the Territorial Court, another 7 declaration under oath or solemn affirmation setting forth the change 8.

(3) Every proprietor, editor or business manager of a newspaper who fails to comply with the provisions of this section, is guilty of an offence and is liable on summary conviction before a Justice of the Peace to a fine not exceeding five hundred dollars plus 9 a fine of fifty dollars per day for the time during which such failure continues. 10

4. The proprietor, editor, or business manager of every newspaper that is to be published in the Yukon Territory 11 after the coming into force of this Ordinance, shall, before the newspaper is published, cause to be filed with the Clerk of the Territorial Court, a declaration similar 12 to the one mentioned in section 2, and every proprietor, editor, or business manager who fails so to do, is guilty of an offence for every issue of the newspaper 13, and is liable on summary conviction to a fine not exceeding five hundred dollars and not less than fifty dollars. 14

5. Every person shall, when filing the declaration that is required by this Ordinance, pay a fee of five dollars to the Clerk of the Territorial Court, and the Clerk shall send a copy of that declaration forthwith to the Commissioner of the Yukon Territory.

#### COMMENTS

1. Literary matter goes far beyond newspapers.

2. Why *cause to be filed* instead of *file*?

3. The name of the official depends on the jurisdiction. It should be the Clerk of a court.

4. Each is to file for all.

5. The *particulars* might go beyond the information specified in subsection (1). Thus, if in a complete address the words *County of Gloucester* were stated (which would not be necessary), and this was now amalgamated with the County of Carleton, that would be a change in *particulars*. If *particulars* is used, it would be better to say *particulars mentioned in subsection (1)*.

6. The words *above* or *below* should not be used as cross-references in legislation.

7. A new editor would not be filing *another* declaration.

8. There would be no change in the *particulars given* if one person died and another was not appointed.

9. This illustrates the ambiguity mentioned in my opening comments.

10. *Fail* and *failure* are good.

11. At any given moment there can be no such thing as a newspaper to be published. See my redrafts.

12. If it is similar it need not be the same. The words *similar to the one* should be deleted.

13. There should be a reference to issues published during a period of default.

14. Is there but one fine for any number of *offences*?

#### RETURN NO. 10

1. In this Ordinance, "newspaper" means any paper printed in order to be distributed and made public

(a) weekly or oftener, or

(b) at intervals not exceeding twenty-six days and containing only or principally advertisements. 1

2. Every proprietor, editor or manager of a newspaper published in the Yukon Territory 2 shall file with the Clerk of the Territorial Court of the Yukon Territory within one month of the coming into force of this Ordinance

(a) a declaration under oath or affirmation setting forth his full names 3

(b) his nationality both by birth and allegiance

(c) the place of publication of the newspaper

(d) the name or title under which the newspaper is published.

3. Every proprietor, editor or manager who fails to comply with the provisions of this Ordinance 4 is guilty of an offence and is liable on summary conviction to a fine not exceeding \$500 and not less than \$50 for each day during the period of the default. 5

4. Where a newspaper is established or there is a change in the office of proprietor, editor or manager after the coming into force of this Ordinance the declaration in section 2 shall be filed with the clerk of the Territorial Court before the first issue. 6

5. In default of compliance with section 4 every proprietor, editor or manager shall be 7 guilty of an offence and liable on summary conviction to a fine not exceeding \$500 for each issue of the newspaper 8; and each issue shall constitute a fresh offence.

6. A fee of \$5 shall be paid to the clerk of the Territorial Court for the filing of a declaration and it is the duty of the clerk to send to the Commissioner of the Yukon Territory a copy of the filed declaration.

#### COMMENTS

1. The definition is much too wide; there is no reference to news.
2. This applies to all newspapers whenever established.
3. The words of paragraph (a) down to and including *setting forth* should be in the opening words.
4. Since there are other commands in this Ordinance, the reference should be to section 2.
5. Since *period of default* is mentioned, the *fails to comply* should be changed to *defaults in complying*.
6. This section is an attempt to combine sections 4 and 5, but the words *before the first issue* do not fit the *change*. The two ideas should be expressed in separate sections. For the first case - *where a newspaper is established* - there is a per issue penalty; but for the second case - *change* - there is a per diem penalty. The two cannot be combined. There should be added after *established* words to the effect of after the coming into force of this Ordinance.
7. *Is* instead of *shall be*.
8. As indicated in comment 6, the per issue fine does not fit the case where there is a change in ownership. Also, there should, in the case of the per issue fine, be a reference to a period of default.

#### GENERAL COMMENTS

After reviewing students' returns I asked them to prepare two different redrafts, and I gave them a plan for each.

Plan I is as follows:

#### PLAN I

1. Newspaper definition
2. (1) Proprietors etc. of newspapers established at date of Ordinance to file statement (each for himself) showing:
  - (2) Per diem penalty for default
3. (1) Proprietor etc. of newspapers hereafter established to file statement showing:

(2) Per issue penalty for default

4. (1) New statements on change in proprietorship etc.

(2) Per diem penalty for default.

My redraft on Plan I was as follows:

1. Newspaper definition. 1

2. (1) Every proprietor, editor and business manager of a newspaper established on the day this Ordinance comes into force shall each 2 within thirty days after that day 3 file with the clerk of the court a declaration under oath setting forth:

(a) his name in full and his nationality both by birth and allegiance 4; and

(b) the name or title under which the newspaper is published.

(2) Every person who defaults in complying with subsection (1) is guilty of an offence and is liable for each day during which the default continues, to a fine not exceeding \$500 and not less than \$50. 5

3. (1) Every proprietor, editor and business manager of a newspaper established after the day on which this Ordinance comes into force 6, shall each, before an issue of the newspaper is published 7, file with the clerk of the court a declaration under oath 8 setting forth:

(a) his name in full and his nationality both by birth and allegiance; and

(b) the name or title under which the newspaper is to be published. 9

(2) Every person who defaults in complying with subsection (1) is guilty of an offence and is liable, for each issue of the newspaper published during the period the default continues, to a fine not exceeding \$500 and not less than \$50. 10

(Where more than one issue of the newspaper is published before the declaration is filed there shall be deemed to be a separate default in complying with subsection (1) in respect of each such issue). 11

4. Where a change occurs in the proprietorship, editorship or business management of a newspaper in respect of which declarations were filed as required by this Ordinance, every proprietor, editor and business manager 12 of the newspaper shall each within thirty days after the change file a declaration as described in section 2 and in default is liable to the fines prescribed in that section. 13

## COMMENTS

1. As indicated, a definition of newspaper was not required for the redrafts.

2. The word *established* is used to identify newspapers existing at the commencement of the Ordinance. Each is to file for himself.

3. After saying *on the day this Ordinance comes into force*, we can say *that day*.

4. The singular pronoun is used to make it clear that each files for himself.

5. By describing the infraction as a *default* we can speak of the period during which the default continues. Here, that is a better word than *violates*; since a violation is ephemeral it is hardly correct to speak of a period of violation.

6. This is parallel to and the opposite of the description in section 2.

7. Here *publish* is used to mean to print and circulate rather than to be in business as in paragraph 2(1)(b). It could be said that a newspaper *is being published* on a named day even though the presses are silent on that day. This meaning here is fortified by introduction of the word *issue*.

8. Evidence Acts provide for a declaration in lieu of an oath.

9. In section 2 it is *is published* (or is being published) but here it must be *is to be published*. Instead, in both places it could be said *name or title of the newspaper*.

10. The number of issues here determines the quantum of the fine rather than constitutes an ingredient of the offence.

11. The idea of a separate offence for each issue could be expressed, but somewhat awkwardly. The disadvantage in doing so is that in a prosecution a separate charge would have to be framed for every issue, whereas under subsection (2) as recommended only one charge would need to be made, and the number of issues would then go to the calculation of the amount of the fine.

12. For the reasons given in comment 10 under our first return my instructions were that on a change every member of the new board should file a declaration for himself.

13. If subsection 3(2) were put at the end then this section could be made to apply to both sections 3 and 4.

There needs to be added the fee and reporting provision. That could be the same as in the original Ordinance, except that *is* should be substituted for *shall be*.

## PLAN II

1. Newspaper definition
2. Proprietor, etc. to file statement at times prescribed in 3 showing:
3. (1) Time for newspapers being published at date of Ordinance  
(2) Time for newspapers publication of which began after
4. Change in proprietorship etc.
5. Penalties:
  - (1) Breach of 2 by newspapers established at date of Ordinance (per diem)
  - (2) Breach of 2 by new newspapers (per issue)
  - (3) Breach of 4 by any newspaper (per diem)

My redraft on Plan II was as follows:

1. Definition of Newspaper.
2. Every proprietor, editor and business manager of a newspaper shall each at the times prescribed 1 in this Ordinance file with the clerk of the court a declaration under oath setting forth
  - (a) his name in full and his nationality both by birth and allegiance; and
  - (b) the name or title under which the newspaper is or is to be published. 2
3. (1) Where a newspaper is being published 3 on the day this Ordinance comes into force the declaration shall be filed within 30 days thereafter.  
(2) Where publication of the newspaper began after the day this Ordinance came into force the declaration shall be filed before an issue of the newspaper is published. 4
4. Where a change occurs in the proprietorship, editorship or business management of a newspaper in respect of which declarations were filed as required by this Ordinance, every proprietor, editor and business manager of the newspaper shall each within thirty days after the change file a declaration as described in section 2. 5
5. (1) Every proprietor, editor and business manager of a newspaper being published on the day this Ordinance comes into force who defaults in complying with section 2, and every proprietor, editor and business manager who defaults in complying with sec-

tion 4, is guilty of an offence and is liable for each day during which the default continues to a fine not exceeding \$500 and not less than \$50. 6

(2) Every proprietor, editor and business manager of a newspaper publication of which began after the day this Ordinance came into force who defaults in complying with section 2 is guilty of an offence and is liable, for each issue of the newspaper published during the period the default continues to a fine not exceeding \$500 and not less than \$50. 7

#### COMMENTS

1. Here the operative part applies to all newspapers; the separation is made in section 3 by setting out different times for each class of newspaper. The result is that there is only one offence for failure to file.

2. *Is or is to be* covers both classes of newspapers.

3. A formula different from the one used in the Plan I draft is used here. The word *published* clearly (I think) means being in business. Section 3 prescribes the times mentioned in section 2; the result is that section 3 is part of and incorporated in section 2.

4. Here, *published*, when used with the word *issue* means (I think) printing and making public.

5. This is the same as section 4 in the Plan I draft.

6. The two per diem penalties are combined here. The section requires careful reading. The first two lines refer to the board *of a newspaper being published*, etc., but the second reference is to the board only, so that it would apply to all newspapers whenever established. If this technique is considered too subtle, the two thoughts could be separated.

7. The per issue penalty is separate from the per diem penalty. As in Plan I there needs to be added the fee and reporting provision.

#### EXERCISES

The following exercises are set out for students to practice with.

##### EXERCISE NO. 1

1. In this Ordinance "newspaper" means

(a) a newspaper that is printed for sale, or

(b) a paper that consists entirely or almost entirely of advertisements whether it is printed for sale or for distribution free of charge,

that is published at intervals of not more than twenty-six days.

2. (1) For every newspaper published in the Yukon Territories there shall be filed with the clerk of the Territorial Court a declaration under oath containing the following information:

- (a) the full names of the proprietors, editors and business managers of the newspaper;
- (b) the nationality by birth and allegiance of the proprietors, editors and business managers of the newspaper;
- (c) the place at which the newspaper is or will be published;
- (d) the name or title under which the newspaper will be published.

(2) If a newspaper has published any editions prior to the commencement of this Ordinance, the declaration with respect to that newspaper shall be filed within one month of such commencement.

(3) If a newspaper is established after the commencement of this Ordinance, or has not published any editions prior to the commencement of this Ordinance, the declaration with respect to that newspaper shall be filed before the first issue of the newspaper is published.

3. Where no declaration in accordance with section 2 is filed for a newspaper, every proprietor, editor and business manager of the newspaper is guilty of an offence and liable on summary conviction

- (a) in the case of a newspaper described in subsection 2(2), to a fine not exceeding five hundred dollars and not less than fifty dollars for each day that the offence continues, or
- (b) in the case of a newspaper described in subsection 2(3), to a fine not exceeding five hundred dollars and not less than fifty dollars for each issue published during the time that the declaration is not filed.

4. (1) Upon every change in the proprietorship, editorship or management of a newspaper in respect of which a declaration was filed under section 2, a new declaration shall be filed in accordance with that section.

(2) Where no new declaration is filed in accordance with subsection (1), every proprietor, editor and business manager of the newspaper is guilty of an offence and liable upon summary conviction to a fine not exceeding five hundred dollars and not less than fifty dollars for each day that the offence continues.

5. The clerk of the Territorial Court may charge a fee of five dollars for the filing of a declaration under this Ordinance and shall

forward a copy of every declaration to the Commissioner of the Yukon Territories as soon as it has been filed.

## EXERCISE NO. 2

1. This Ordinance may be cited as the *Newspaper Ordinance*.

2. In this Ordinance

“newspaper” means any paper containing

(1) news on facts or occurrences or remarks or observation thereon

(2) advertisements printed for public sale or distribution periodically, or in parts, at intervals not exceeding twenty-six days between the publication of any two such papers.

“oath” includes affirmation in cases where applicable.

“proprietor” includes editors and business managers and any person acting in such capacity.

3. Every proprietor of a newspaper published in the Yukon Territories shall file with the clerk of the Territorial Court a declaration under oath setting forth

(1) his name in full

(2) his nationality, by birth and allegiance

(3) the place of publication of the newspaper and

(4) the name under which it is published

4. Any proprietor who does not comply with the provisions of section 3 is liable on conviction before a Justice of the Peace to a fine not exceeding five hundred dollars, and not less than fifty dollars for each day his non-compliance continues, and further, each publication of the newspaper shall be deemed a new violation by such proprietor.

5. (1) The proprietors of existing newspapers shall comply with the provisions of this Ordinance within one month of the passing of this Ordinance.

(2) The provisions of section 4 deeming each publication of a newspaper a new offence by the proprietor does not apply to the existing newspapers.

6. A proprietor filing a declaration under section 3 shall pay to the clerk of the Territorial Court a fee of five dollars, and it shall be the duty of the clerk to send to the Commissioner of the Territory a copy of such declaration forthwith after the filing thereof.

the duty of the clerk to send to the Commissioner of the Territory a copy of such declaration forthwith after the filing thereof.

### EXERCISE NO. 3

1. In this Ordinance "newspaper" means any paper containing

(a) public news or information printed therein for sale, or

(b) only or principally advertisements printed therein in order to be distributed,

and published in parts or numbers at intervals not exceeding twenty-six days.

2. Every proprietor, editor and business manager of every newspaper published before passing of this Ordinance shall within one month from the date of passing file with the clerk of the court a declaration under oath setting out the following particulars.

(a) the full name and nationality, by birth or allegiance of every proprietor, editor and business manager,

(b) the address where the newspaper is printed and published and

(c) the title of the newspaper.

3. (1) Where a newspaper is published after the date of passing of this Ordinance every proprietor, editor and business manager shall file a declaration in accordance with section 2.

(2) Each issue of a newspaper published, without first having filed a declaration in accordance with section 2, shall be deemed to constitute a fresh offence against every proprietor, editor and business manager.

4. Every proprietor, editor and business manager of every newspaper shall file a fresh declaration upon every change in the proprietorship, editorship or management of any newspaper.

5. Every person who files a declaration under the provisions of this Ordinance shall pay to the clerk of the court a fee of five dollars.

6. The clerk of the court shall as soon as possible forward a copy of every declaration filed with him under section 2, to the Commissioner.

7. Every proprietor, editor and business manager of a newspaper who fails to comply with the provisions of this Ordinance is liable on summary conviction to a fine not exceeding five hundred dollar and not less than fifty dollars for each day of non compliance of the provisions of this Ordinance.

#### EXERCISE NO. 4

1. In this Ordinance "newspaper" means a paper containing public news or remarks or observations thereon that is

- (a) printed for sale and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days, and
- (b) printed in order to be distributed and made public weekly or oftener, or at intervals not exceeding twenty-six days and containing advertisements only or principally.

2. (1) The proprietor, editor and business manager of every newspaper published in the Yukon Territory shall file with the clerk of the Territorial Court a declaration under oath or affirmation setting forth the following, namely:-

(a) the name in full and nationality of the proprietor, editor and business manager of the newspaper, and

(b) the name or title under which the newspaper is published.

(2) The declaration under subsection (1) shall be filed,

(a) in the case of a newspaper existing immediately before the coming into force of this Ordinance, within one month after this Ordinance comes into force;

(b) in the case of a newspaper commenced after this Ordinance comes into force, before the newspaper is published;

(c) in the case of a change in the proprietorship, editorship or management of a newspaper, within one month, after the change.

3. Any proprietor, editor or business manager of a newspaper who fails to comply with section 2 is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars, and not less than fifty dollars for each day during which the failure continues; and each issue of the newspaper shall be deemed to constitute a fresh offence.

4. On the filing of the declaration under section 2, a fee of five dollars must be paid to the clerk of the Territorial Court who must then forthwith send a copy of the declaration to the Commissioner of the Yukon Territory.

## CHAPTER NOTES X

1. Comp. Leg. 93
2. Reed Dickerson: *The Fundamentals of Legal Drafting*. Little, Brown and Company, Boston. 1965, 77 et seq. Comp Leg. 20, 87.
3. Comp Leg. 8
4. An illustration of the danger in writing by typewriter first as 1st. In writing or printing, last might be written 1st, and 1st, meaning first, might be expanded to last. What is intended here is *last* or *latest*.

## CHAPTER XI

### MECHANICS' LIENS

This assignment was intended primarily as an exercise in polishing. Although the first section is unduly long it reads fairly easily and is not difficult to understand. It can be made into a more respectable Act merely by chopping up the long section into a number of subsections, doing a little re-arranging and making a few minor changes in language.

This Act supplements the common law by giving a right of sale where a lien exists at common law. Without it, a lienholder would have to launch a regular law suit to collect his bill. The language of the first half-dozen lines fits into the common law, and on a revision not intended to change substance the language of the common law should not be altered, except as to minor matters of grammar or drafting style. If any change is sought to be made, the relevant judicial decisions would first have to be studied.

#### AN ACT RESPECTING LIENS IN FAVOUR OF MECHANICS

1. Every mechanic or other person 1 who has bestowed money or skill and materials 2 upon any chattel or thing 3 in the alteration and improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien 4 upon such chattel or thing for the amount or value 5 of the money or skill and materials bestowed, shall, while such lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid 6, have the right, in addition to all other remedies provided by law, 7 to sell the chattel or thing in respect of which the lien exists, on giving one month's notice by 8 advertisement in a newspaper published in the locality in which the work 9 was done, or in case there is no newspaper published in such locality, or within ten miles of the place where the work was done, then by posting up not less than five notices in the most 10 public places within the locality for one month, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the residence or last known place of residence, if any, of the owner 11 as the case may be 12, or by mailing the same to him by registered letter if his address be 13 known.

2. Such mechanic or other person 14 shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto.

#### COMMENTS

1. If there is *other person* then *mechanic* is not needed.

2. Is it money - or skill and materials; or money or skill - and materials?

3. Is not a thing a chattel?

4. This Act does not create a lien; the lien exists at common law.

5. Two nouns followed by two modifiers. The intention apparently is that *amount* applies to *money*, and *value* applies to *skill and materials*. Why not say *amount of money* and *value of skill and materials*?

6. Only *amount* is mentioned here; not *amount or value*. If it remains unpaid for three months it must be *after the same ought to have been paid*.

7. To ensure that remedies under the general law are available, it is necessary to say so.<sup>1</sup>

8. The alternatives here are somewhat confusing. There is

by advertisement

or by posting

and leaving

or by mailing

9. The word *work* appears for the first time. Greater internal consistency might be achieved by defining *work* as the bestowal of money or of skill and materials; then expressions such as *who does any work* and *the work was done* could be used.

10. What is *most* public is a matter of opinion.

11. The word *owner* appears for the first time. A person bringing in a TV set for repair might not be the owner.

12. To what does *as the case may be* refer?

13. The subjunctive form would not now be used.

14. The *such* is a long way from *mechanic or other person* in the first line.

## STUDENTS' RETURNS

### RETURN NO. 1

1. This Act may be cited as the *Workmen Lien Act*.

2. Where a workman has repaired or improved the property of a customer 1, he shall 2 have, as long as monies 3 due as costs of such repairs or improvement remains unpaid, a lien on the property to the extent of the unpaid monies.

3. Where any amount 4 due to a workman remains unpaid for three months, he may, on compliance with the provisions of 5 section 4, sell the property.

4. (1) Before property can be sold by a workman for monies due to him, he shall advertise such sale 6

(a) by 7 a notice in a newspaper in the locality 8, for 9 one month, or

(b) by 10 a notice in five 11 public places in the locality, and

(c) by leaving 12 a notice at the residence or last place of residence 13 of the owner or by mailing the notice to him by registered mail.

(2) The notice required by subsection (1) shall state

(a) the name of the workman to whom the money is owed 14

(b) the amount of the debt 15

(c) a description of the property to be sold

(d) the time and place of the sale, and

(e) the name of the owner of the property.

5. The workman shall apply the proceeds of the sale in payment of the amount due to him and the cost of advertising and sale, and shall on application pay over the surplus to the person entitled. 16

#### COMMENTS

1. Instead of setting up an adverbial case, it would be better to use the adjectival form, as in the original - *Every person who ..... has the right ..... to sell.*

There is no need to introduce the word *customer*.

2. *Has* a lien, rather than *shall have* a lien. This provision creates a lien; in the original the lien exists under the common law. In civil law jurisdiction the lien must be created by a written law, namely, a civil code. In a common law jurisdiction, however, the right to a lien is not given by a written law, but by the unwritten common law.

3. 4. A slight lack of consistency here. *Monies* in one place and *amount* in the other. The plural *monies* has been used a good deal in legislation but the modern tendency is to use the singular *money*.

5. The words *the provision of* are unnecessary.

6. This is the A + B or C situation. Are the alternatives A + (B or C); or (A + B) or C?

7. There should be a verb here. By *publishing*. The original requires only one month's notice, and not publication for one month.

8. The locality is unidentified.

9. This draft requires publication for the whole of one month, but in what kind of a paper - monthly, weekly or daily?

10. A verb such as *posting* is needed here.

11. If the notice is posted in six places, has there been compliance with the requirement? Better to say *at least* in five places.

12. Is *leaving* an advertisement?

13. As written a notice could be left at a former residence A even if it is known that the debtor now lives at residence B.

14. 15. *Money* in one paragraph and *debt* in the next. There should be commas at the end of each paragraph.

16. Entitled to what?

## RETURN NO. 2

1. Every person who has a lien on any chattel or thing 1 by reason 2 that he has expended 3 his money, skill or materials to alter or improve its condition or value may, so long as the lien exists and in addition to all other remedies provided by law, sell the chattel or thing subject to his lien 4 at public auction after he has given notice of the sale in accordance with the provisions of this Act.

2. No person shall give notice of the sale of any chattel or thing subject to his lien unless the amount of the lien remains unpaid after three months from the date the lien arose 5.

3. The notice of sale must contain the following information: 6

- (a) the name of the person indebted 7,
- (b) the amount of the debt,
- (c) a description of the chattel or thing to be sold,
- (d) the time and place of the sale, and
- (e) the name of the auctioneer.

4. (1) The person claiming 8 the lien shall serve a copy of the notice of sale on the owner of the chattel or thing to be sold

- (a) by registered mail if his address is known, or
- (b) by delivering it to his last known place of residence

at least one month before the date of the sale 9.

(2) The person claiming the lien shall advertise the sale of the chattel or thing subject to his lien

(a) by inserting the notice of sale in the newspaper published closest within ten miles 10 to the locality where the lien arose at least one month before the date of the sale, or

(b) if no newspaper is published within that area, by posting copies of the notice of sale in at least five of the most 11 public places in the locality where the lien arose and leaving the notices in such place for one month before the date of the sale.

5. A person who has sold a chattel or thing subject to his lien may retain out of the proceeds of the sale the amount owed to him under the lien 12 and the costs of giving notice of the sale, and he shall pay over any amount remaining to the person entitled thereto if that person applies therefor 13.

#### COMMENTS

1. If *chattel* is mentioned, *thing* is not needed.

2. The words *by reason* call for *of his having*.

3. *Expended* fits money, but not too well skill or materials.

4. The definite article identifies chattel, so that the words *subject to his lien* are unnecessary.

5. Sections 2, 3 and 4 should be restructured. They should be conditions rather than commands. The essence is - *may, if unpaid, sell after giving a notice containing*.

6. The words *the following information* are not needed, nor is the colon.

7. Up to this point *debt* has not been mentioned; neither has the amount of the lien. The original says a lien *for the amount or value*.

8. There is no *claiming*. The lienholder simply has a lien. Do (a) and (b) mean that the notice may be delivered at his last place of residence even if his present address is known?

9. Instead of one concluding line to the outer margin I normally would prefer to put this into the opening words - *shall at least one month ..... serve*.

10. Insertion of *within ten miles* is awkward. The newspaper is published closest *to* the locality, and within ten miles *of* the locality. The distance need not be mentioned in (a); it is enough to mention it in (b).

11. The original does say *most* public places. That opens the door to dispute. The notice might be posted in five public places, but there could be dispute whether they are the five *most* public places.

If the notices must be left for one month, must someone stand guard?

12. The amount is not owed under the lien. The lien is for what is owed for the work done. Nowhere in this draft is the amount of the lien stated.

13. If an application is required I would lower the clause to a phrase - *upon application*.

#### RETURN NO. 3

1. This Act may be cited as the *Mechanics' 1 Lien Act*.

2. In this Act, 2

"lien-holder" means any person who has a lien on a chattel by reason of 3 having used his money or having used his skill and materials for

(a) the alteration and improvement of the chattel, or

(b) the increasing of the value of the chattel.

"owner" 4 means the person who had the right to possession 5 of a chattel immediately prior to the lien attaching to it.

3. Where three months have elapsed 6 since a lien on a chattel first arose 7 and the lien-holder remains unpaid for the lien 8, he may sell the chattel by public auction if he then gives notice of sale according to section 4; such sale to occur not less than one month after the notice 9.

4. A notice of sale shall state the name of the lien-holder, the amount of his lien, a description of the chattel to be sold, the time and place of the sale, and, the name of the auctioneer and shall be given

(a) by advertising the notice in a newspaper published near the place where the work 10 was done, or, if there is no newspaper published within ten miles of that place, by posting it in at least five prominent 11 public locations 12 near that place, and

(b) by depositing it at the place of residence of the owner or by sending it by registered mail to the last address 13 of the owner, if the lienholder knows the owner's place of residence or last address.

5. The proceeds of the sale shall be applied first in payment of the lien 14, the costs of advertising and the costs of sale, and the balance is payable to the owner of the chattel on his application therefor to the lienholder.

## COMMENTS

1. The apostrophe is not needed.
2. Definitions are not needed.
3. By reason of his having used. The second *having used* could be deleted.
4. The word *owner* does not appear until the end, but there the owner is not identified with the debt or lien. The definition is general, so that in sections 4 and 5 *owner* means any owner.
5. Possession is a very tricky concept; it should not be introduced here. Does not the mechanic, after the chattel is left with him, have the right to possession? If, after leaving my TV set with a repairman, I sell it to someone and give him the ticket, I have no more rights and the purchaser is not the owner as defined.
6. The emphasis is wrong here. The condition is that the debt has not been paid after three months, rather than simply the lapse of time.
7. The lien does not arise instantaneously. The moment the mechanic begins to work or to supply materials he has a lien, and the lien increases as work goes on.
8. The lien-holder is not paid for the lien; he is paid for the work done and materials supplied.
9. What follows the semi-colon is not a complete clause.  
Instead of a command or prohibition there should be a condition - *may sell after giving one month's notice*.
10. The word *work* appears for the first time and does not connect with anything that has gone before.
11. Why *prominent* in addition to *public*?
12. Why *locations* instead of *places*?
13. Is the last address the place where the owner now lives, or a place where he lived before.
14. It is the debt that is paid, not the lien.

## RETURN NO. 4

1. A person who,
  - (a) has possession of a chattel with the consent of its owner 1,  
and
  - (b) has applied money, skill, or materials upon the chattel 2  
either

(i) in the alteration and improvement of it, or

(ii) with the purpose of enhancing its value, and

(c) has submitted to the owner a request for payment of the amount of money, the value of the skill or the value of the materials that he has applied to the chattel 3,

has a lien, hereinafter referred to as a "chattel lien," 4 upon the chattel.

2. If, after the expiry of three months from the day the request for payment was submitted to the owner, the chattel lien has not been discharged 5 the chattel lienholder may,

(a) in addition to any other remedies provided by law, and

(b) subject to fulfilling the conditions for notice set forth in section 3

sell the chattel by public auction. 6

3. Notice of the sale by public auction 7 shall be in Form A in the Schedule to this Act 8 and shall be given to the owner of the chattel not less than one month before the time of sale by,

(a) personally serving it on the owner, or

(b) depositing it at the owner's place of residence, or

(c) sending it by registered mail to the owner's place of residence last known to the chattel lienholder, and

(d) advertising in the manner set out in section 4. 9

4. (1) The advertising required by section 3 shall be done by publishing 10 Form A in a newspaper circulating in the locality where the chattel lienholder applied the money, skill, or materials to the chattel being sold.

(2) If no newspaper circulates in the aforesaid 11 locality the chattel lienholder shall advertise by posting copies of Form A in five different public places in the aforesaid 12 locality.

(3) The publishing and posting referred to in subsections (1) and (2) shall be done not less than one month before the time of sale. 13

5. Out of the proceeds of the sale there shall be paid,

(a) firstly the amount stipulated in the request for payment submitted to the owner,

(b) secondly the expenses incurred for advertising and sale of the chattel,

(c) thirdly any balance remaining shall be paid 14 to the owner if he makes written application for it and serves the application on the chattel lienholder within thirty days after the sale of the chattel.

## FORM A

### COMMENTS

1. There is no need to define the mechanic as the person to whom a chattel has been brought. In any case a definition such as this could only lead to difficulties. Suppose I purchase a TV set under a conditional sale agreement. I have a right to possession, but the store is the owner; if I take it to a repair shop the repairman does not have the consent of the owner.

2. Students showed a reluctance to use the word *bestow*. According to the dictionaries it fits money, skill and materials. It does not sound right to me to say that a repairman applies money, skill or materials *upon* a chattel *in* its alteration or *with the* purpose of enhancing its value.

3. In this draft the idea of a request for payment is introduced. Does this mean that if a clerk, contrary to instructions, gives it to me, and I take away the chattel before the repairman has made such a request he has no lien? Or does the lien arise after I take it home and payment is then requested?

4. This title is not needed.

5. The condition is failure to pay, and not failure to discharge the lien.

6. It would, I think, be smoother to say that the lienholder in addition to any other remedy may sell the chattel after complying with section 3.

7. I would be inclined to make this section a subsection and then drop the words *by public auction*.

8. The Interpretation Act makes it unnecessary to say *to this Act*.

9. The advertising should be a separate requirement and should not be tied to the idea of service. In any case, we cannot have (a) or (b) or (c) and (d), because we do not know what the alternatives are.

10. If the last paragraph of section 3 and this section were brought together there could be a shorter provision. If the requirement is directly stated as in the original it would not be necessary to say that *the advertising shall be done by publishing*.

11. 12. The *aforesaid*s could be eliminated by ending subsection (1) with a semi-colon and continuing with what is subsection (2).<sup>2</sup>

13. This whole section could be written as a single sentence, along the pattern - *at least one month prior to the sale the lienholder must advertise a notice of the sale.*

14. Paragraph (c) does not fit the opening words; it should go to the outer margin. As it stands it says *there shall be paid any balance remaining shall be paid.*

#### RETURN NO. 5

1. This Ordinance may be cited as the Ordinance Respecting Liens.

2. In this Ordinance—

“person” means a mechanic, artificer, craftsman or any other person 1 who bestows work and labour 2 on a chattel for reward or remuneration.

“work and labour” means any work done to a chattel and includes any alteration and improvement, or the importing of an additional value, to 3 a chattel by expending skill money or materials.

3. Every person who at the request 4 of an owner 5 bestows work and labour on a chattel and is not paid for his work and labour 6 shall be entitled 7 to a lien on the chattel for the value of the work and labour so bestowed.

4. (1) Where a lien on a chattel exists for a period of three months from the date when payment for work and labour ought to have been made 8, the person who is entitled to the lien 9 shall have 10 the right, in addition to all other remedies provided by law, to sell the chattel after giving to the owner one month’s notice of the intended sale.

(2) The sale of a chattel in respect of which a lien exists shall be by auction 11.

5. (1) For the purposes of this Ordinance notice is deemed to be given 12 to the owner if it is advertised for one month in a newspaper published in the locality, or within ten miles 13, where the work 14 was done, or where no newspaper is so published, then subject to subsection (2), by posting up notice 15 for one month in five public places within the locality where the work was done.

(2) Where notice is posted up in public places a copy of the notice shall be served on the owner by leaving it at his last known address, or if his present address is known, by sending it to him by registered post to that address 16.

6. Every notice shall state 17—

(a) the name of the owner of the chattel in respect of which the lien exists,

(b) the name of the person entitled to the lien,

(c) the description of the chattel to be sold,

(d) the time and place of sale, and

(e) the name of the auctioneer.

7. (1) After the expiration of one month from the date when the notice was first advertised or was first posted up, as the case may be, the person entitled to the lien shall cause the chattel to be sold in accordance with section 4 18.

(2) The person entitled to the lien shall 19 deduct from the proceeds of sale the amount due to him for work and labour and all expenses incidental to the sale and shall upon application by the owner pay over to him any surplus from the proceeds of the sale.

(3) Where an owner fails to apply for the surplus within one year from the date of the sale his claim to the surplus shall be barred 20.

#### COMMENTS

1. The definition is only that a person is a person who bestows; mention of mechanic, etc. is not necessary. In any case the definition does not serve any purpose since its content is repeated in section 3.

2. A definition of *work* could be useful. *Labour* is merely a synonym for work.

3. *Of* would be a better preposition for alteration and improvement.

4. A request need not be mentioned; the repairman would not have the chattel without a request.

5. Owner of what?

6. Failure to pay need not be mentioned.

7. Throughout this draft *shall* is constantly used instead of the simple present tense. This provision is intended to create the lien.

8. The important fact is failure to pay rather than the existence of the lien.

9. *Person who has the lien, or lien-holder.*

10. *Has* instead of *shall have*, or, better still, *may sell*.

11. Subsection (2) could be dropped if *by public auction* were inserted after *sell* in subsection (1).

12. The notice and sale provisions should be re-arranged. The essence is that if payment is not made within three months then the repairman may sell the chattel after giving one month's notice of the sale by advertising or posting and serving a copy of the notice on the owner.

The fiction of deeming a notice to be given is not needed to describe an actual event.<sup>3</sup>

13. Within ten miles of what?

14. Having defined *work and labour* here only *work* is used; the definition is therefore not applicable.

15. The notice is not described until the next section.

16. This subsection is not very clear. The notice is to be sent to his present address, but if the present address is not known it is to be left at his last known address.

17. These particulars should appear earlier, and should be a description of the contents *a notice setting forth* rather than a direction to state.

18. If *one month's notice* and *may sell* were said earlier this subsection would not be needed.

19. This should be permission to deduct, not a command.

20. In this event, who gets the money? It is usual (see chapter XII) to provide that the unclaimed money is to be paid into a public treasury.

#### RETURN NO. 6

1. "mechanics lien" 1 is a lien claimed upon goods by a person who built or altered those goods, and the lien is in an amount equal to the balance 2 of the money, skill or material expended 3 that remains unpaid.

2. A mechanics lien claimant 4 who does not receive payment 5 within three months of the time that payment became due may sell the goods in accordance with section 3.

3. (1) A notice of sale 6 shall contain: 7 the name of the claimant; the amount of the lien; a description of the goods; the time and place of the sale; the name of the auctioneer.

(2) If the address of the owner of the goods is known, a notice of sale shall be sent to the owner by registered mail.

(3) If the address of the owner is not known, a notice of sale shall be sent 8 by mail to the owner at his last place of residence.

(4) If there is a newspaper published within ten miles of the place in which the building or altering of the goods was done, a notice of

sale shall be placed in the newspaper at least one month before the time of sale.

(5) If there is no newspaper within ten miles, notices of sale shall be posted in five public places at least one month before the time of sale.

4. The proceeds of a sale under this Act shall be applied as follows: firstly, to the claimants unpaid balance 9; secondly, to the costs of the sale; thirdly, to any person legally entitled to the sum remaining 10.

5. Nothing in this Act is a bar to any other civil action 11.

#### COMMENTS

1. A definition should be preceded by *In this Ordinance*. A lien is not *claimed*; it exists. The original Act presupposes a lien at common law; many drafts provided for the creation of a lien; this draft does neither.

Repairing is not necessarily building or altering.

2. A balance need not be mentioned.

3. Expended for what?

4. Aside from the objection to *claimant* it would be better to say a claimant of a mechanics lien. Also, I shy away from this liberal use of nouns as adjectives.<sup>4</sup>

5. What payment? Section 3 does not prescribe a manner of sale *in accordance with*; it should be a condition precedent to the sale.

6. There is no connection between sections 2 and 3. Section 3 begins with a *notice of sale* but there is no requirement that a notice be given. Public auction is not mentioned.

7. It is not usual to have a colon here. The practice is to have no punctuation and to set out the contents of the notice in lettered paragraphs or simply to have commas.

8. In the original the notice is to be left, but perhaps it would be better to provide for mailing on the chance that it will be forwarded.

9. the *claimants unpaid balance* is a vague way of saying *the amount due to the claimant*.

10. For this kind of a provision, see chapter XII.

11. This is Alice's another cup of tea. No civil action is mentioned, so there cannot be any *other* civil action.

## RETURN NO. 7

1. Subject to this Act 1, the holder of a lien upon a chattel for the value of money, skill or materials 2 bestowed upon it may sell it if the amount due to him in respect of the lien is not paid within three months after it becomes due.

2. One month's notice of the sale of a chattel shall be given

(a) by advertising the notice in a newspaper published within ten miles of the locality where the money, skill or materials were bestowed upon the chattel or, if there is no such newspaper, by posting up the notice in not less than five conspicuous public places in the locality, and

(b) by leaving the notice at the residence of the owner last known to the holder of the lien, if he knows one, or, where he knows the address of the owner, by mailing it to him by registered mail. 3

3. A notice 4 shall set out the name of the owner of the chattel, the amount of the debt 5, a description of the chattel, the time and place of the sale, and the name of the auctioneer. 6

4. The balance of the proceeds of the sale of a chattel remaining after 7 the amount of the debt, the costs of advertising and the costs of the sale have been paid, shall be paid to the owner of the chattel upon application by him.

5. This Act does not affect any other remedy available to the holder of a lien.

## COMMENTS

1. This is the right idea, but section 1 is not *subject to* anything in section 2. It could be made a clear condition by saying *may upon compliance with this Act*.

2. The words *that he* should be inserted.

3. This student correctly grasped the alternative modes of service. However, I would reverse the events described in paragraph (b).

4. The notice is not connected to section 2. It should be *The notice* or *A notice of sale*.

5. The *debt* is not connected to section 1. It would be better to use the language of section 1 - *the amount due to him*.

6. Auctioneer is mentioned here as in the original, but up to this point there is no indication that the sale is to be by public auction. I would put into the first section *may ..... sell by public auction*.

7. The words *payment of* were apparently omitted. But there is no provision for distribution; that should be provided before dealing with a balance.

#### RETURN NO. 8

1. This Act may be cited as the Mechanics' Liens Act.
2. Every person who, with the consent of the owner of a chattel 1, performs a service on that chattel by applying 2 money, skills or materials for the purpose of improving the appearance, value or quality of it, is entitled 3 to a lien on the chattel until such time as he receives payment for his services 4.
3. In order to recover payment for his services 5, the lien holder may sell the chattel on condition that:
  - (a) the debt is outstanding for a period of at least three months calculated 6 from the date when the lien holder took steps 7 to notify the owner that payment was due; 8
  - (b) he gives one month's notice commencing at the end of the period referred to in paragraph (a) 9, of his intention 10 to sell the chattel:—
    - (i) by advertising in the newspaper published nearest to the locality in which the services 11 were performed but within a ten-mile radius of that locality, or, where there is no such newspaper, 12
    - (ii) by posting up a notice in the form prescribed in the Schedule 13 in each of 14 five prominent public places in the locality in which the services were performed and
  - (c) he sends a notice in the form prescribed in the Schedule to the residence, or if unknown, to the last known residence of the owner 15, or mails such notice to the owner by registered letter.
4. The proceeds of sale are to be applied to the payment of the debt and the cost of advertising and sale, and upon application by the owner, the surplus is to be paid to him.
5. Nothing in this Act shall be construed as affecting the right of a lien holder to bring civil action against the owner.

#### SCHEDULE

Notice is hereby given that unless the sum of (amount of debt) due and payable to (name of lien holder) by (name of owner) for services performed on his (description of chattel) is paid not later than one month after the date of this notice, the chattel will be sold by public auction at (place of proposed sale) on the day after the

date of the expiration of this notice at (time of sale) by (name of auctioneer)

.....  
Signed (name of lien holder)

.....  
Date (date of notice)

#### COMMENTS

This draft is too wordy.

1. Consent need not be mentioned; it must necessarily be there. But as indicated in an earlier draft, the chattel may be brought in by someone other than the owner.

2. Why not *applies money* instead of *performs a service on that chattel by applying*?

3. This creates the lien.

4. Of course the lien exists only until payment of the debt.

5. Of course the chattel is sold in order to recover payment.

6. Is not *three months from* the same as *three months calculated from*.

7. Why not *notified* instead of *took steps to notify*. If the repairman takes out pad and pencil, has he *taken steps to notify*?

8. Paragraphs (a) and (b) are different kinds of conditions, and I would not set them out in parallel paragraphs. The essence is - *if the debt is unpaid after three months the chattel may be sold after one month's notice*.

9. There is excessive paragraphing here.

10. *Notice* of the sale, rather than *intention* to sell, is to be given.

11. Now we see why the word *service* was introduced in section one, namely, to identify the place of publication. The idea is good, but the execution not so good. If in section 1 the person were described as one *who does any work on a chattel, that is to say, bestows any money or skill, etc.*, then the word *work* could be used.

12. The last six words belong in subparagraph (ii).

13. There is an inconsistency here. Under paragraph (b) one month's notice of sale may be advertised three months after billing. But the form in the Schedule gives one month's notice after the date of the notice.

14. Why *each of*?

15. This seems to be a bit garbled. It actually says *sends a notice ..... to the residence of the owner, or mails such notice to the owner.*

GENERAL COMMENTS

In my redraft set out below the concluding words of subsection 1(1) *upon complying with this Act* have the effect of incorporating subsections (2) and (3). The persons and items described in subsection (1) may therefore be identified in subsections (2) and (3) by the definite article or an appropriate pronoun, without repetition or cross-reference.

The paragraphing in section 1 is a tabulation; it breaks up the solid type so that its content can be more readily seen.

MECHANICS LIEN ACT

1. (1) Every person who does any work on a chattel by bestowing money, skill or materials upon it in the alteration or improvement of its properties or for the purpose of imparting additional value to it, so as thereby to be entitled to a lien upon the chattel for the amount of money or value of skill or materials bestowed, may, if the amount to which he is entitled remains unpaid for three months after it ought to have been paid, in addition to any other remedy, sell the chattel by public auction upon complying with this Act.

(2) At least one month before the sale a notice of sale, setting forth

(a) the name of the person for whom the work was done,

(b) the amount of the lien,

(c) a description of the chattel to be sold,

(d) the time and place of sale, and

(e) the name of the auctioneer,

shall be given by advertisement in a newspaper published within an area of ten miles from the place where the work was done, but, if no newspaper is so published, then by posting up the notice in at least five public places in that area.

(3) The notice of sale shall also be sent by registered mail to the person for whom the work was done or left at his residence, but if his address is not known it shall be left at his last known address.

(4) Out of the proceeds of the sale there shall be paid the amount of the lien and the costs of advertising and sale, and the remainder shall be paid to the person entitled thereto upon his application.

## EXERCISES

On the following additional students' returns comments from readers are invited.

### EXERCISE NO. 1

1. Where a person who has a lien upon a chattel by virtue of his having expended work or materials in the alteration or improvement of the chattel is not paid the price of the work or materials within three months after such price became due and payable, he may, while his lien subsists, sell the chattel by auction in accordance with this Ordinance.

2. Before a person sells a chattel under this Ordinance, he shall give notice of the sale at least one month prior thereto by advertisement in a newspaper published in the locality where the work or materials giving rise to the lien were expended or, if there is no such newspaper, by posting notices in at least five public places within the locality and shall serve such notice in writing upon the owner of the chattel by leaving the notice at, or mailing the notice by registered mail to, his last known place of residence.

3. The notice referred to in section 2 shall give the name of the debtor, the amount of the debt, a description of the chattel to be sold, the time and place of the sale and the name of the auctioneer.

4. The proceeds of the sale of a chattel under this Ordinance shall be applied to pay the debt owing to the person who has a lien on the chattel and the costs of the sale, including notices of the sale, and any proceeds remaining unpaid thereafter shall be paid to the owner of the chattel.

5. Nothing in this Ordinance shall be construed as limiting any other remedies that may be available to any person.

### EXERCISE NO. 2

1. (1) Every workman who acquires a lien on a chattel bailed to him for the purpose of repairing, altering or improving it, has the right to sell it at public auction if the amount to which he is entitled remains unpaid for three months next following the date when it is due.

(2) The right to sell is in addition to all other existing remedies and shall be exercised while the lien exists and at the expiration of notice of the sale.

2. (1) The notice setting out the name of the person indebted, the amount of the debt, a description of the chattel to be sold, the time and place of the sale and the name of the auctioneer, shall be advertised for a period of one month before the sale in a newspaper

published in the locality where the work was done or published within ten miles of that place.

(2) Where no newspaper exists, the notice shall be posted up in at least five public places for a period of one month and a notice sent by registered mail to his address, but if it is not known, the notice shall be delivered at his last known address.

3. (1) The proceeds of the sale is to be used to pay the workman the amount due to him, to pay the costs of advertising and of sale, and the balance, if any, paid to the owner of the chattel upon his application for it.

(2) If no application is made the balance is to be paid to the Territorial Treasurer, who shall keep it for one year, and if after that period it remains unclaimed, it shall form part of the general revenue.

### EXERCISE NO. 3

1. Subject to section 2, every person who has supplied capital, material or labour for an improvement in or an addition to any property so as to qualify for a lien in respect of the property, may during the existence of the lien but not before a period of three months has passed during which the amount claimed under the lien has remained due, sell the property in respect of which the lien exists.

2. Every person selling property under section 1 shall

(a) as described in section 3 advertise the sale by a notice containing the name of the debtor, the amount of the debt, a description of the property to be sold, the time and place of the sale and the name of the auctioneer, and

(b) send by registered mail or deliver the notice described in paragraph 2(a) to the residence of the debtor.

3. Advertisement of a sale shall

(a) where there is a newspaper published within ten miles of the locality of the property to be sold, consist of the publication of the notice once a week for the four weeks preceding the sale or

(b) where the locality of the property to be sold does not have a newspaper published within ten miles, consist of posting notices in five different places reasonably accessible to the public for the four weeks preceding the sale.

4. (1) Every person selling property under section 1 shall be entitled to proceeds of the sale to cover the amount due under the lien and the costs of the advertising and the sale.

(2) Proceeds of the sale not claimed under subsection 4(1) shall upon application to the person who sold the property, be paid to those applicants with rightful claims and in order of their applications.

#### CHAPTER NOTES XI

1. Const. Stat. 100-102.
2. See Comp. Leg. 77-78.
3. See D.C. Pearce, Statutory Interpretation in Australia. Butterworths. Melbourne. 1974. 37.
4. See Fowler's Modern English Usage, 2nd ed. under (*noun*) and (*noun-adjectives*.)

## CHAPTER XII

### HOTELKEEPERS ORDINANCE

This is another enactment supplementary to the common law. An innkeeper had a lien on goods brought to an inn by a guest for the amount of the charges for board or lodging. The lien existed apart from statute. The Innkeepers Act of 1878<sup>1</sup> gave a right of seizure and sale to boarding house and lodging house keepers (who had no such lien at common law) and included innkeepers as well. In 1863 the liability of an innkeeper to make good the loss of a guest's property was limited.<sup>2</sup>

In 1874<sup>3</sup> the province of Ontario enacted an Innkeepers Act. It put together in one Act the English Acts of 1863 and 1878. This Act was carried forward from revision to revision and exists today substantially in its original form. The Ontario Act was copied virtually verbatim by the Northwest Territories and from there found its way into the statutes of Alberta and Saskatchewan. The Ordinance of the Northwest Territories is used as an exercise here.

### HOTEL KEEPERS' ORDINANCE

#### *Short Title*

1. This Ordinance may be cited as "The Hotelkeepers' Ordinance".

#### *Lien 1 of Hotel or Boarding House Keeper*

2. Any hotel, boarding or lodging house keeper 2 may seize and detain 3 in his hotel, house, or on his premises, and 4 before the same shall have been removed therefrom 5, the trunks and personal property of 6 any person who is indebted to him for board and 7 lodging and shall be responsible 8 for the safe keeping of the same; and in addition to all remedies provided by law 9 he shall have the right in case the charges 10 remain unpaid for three months after the seizure thereof 11 to sell by public auction the baggage and property 12 of such guest 13, boarder or lodger, so seized, on posting and keeping posted during the period of one week on the outside of the door of such 14 hotel, boarding or lodging house a notice of such 15 intended sale, stating the name of the guest, boarder or lodger, the amount of his indebtedness, a description of the baggage or other property 16 to be sold, the time and place of sale, and the name of the auctioneer, and after such 17 sale, such 18 inn 19, hotel, boarding or lodging house keeper may apply the proceeds of such 20 sale in payment of the amount due to him as aforesaid 21 and the costs of such 22 advertising and sale; and he shall pay over the surplus if any to the person entitled thereto on application being made by him therefor; and in case application

therefor be 23 not forthwith made he shall immediately pay the same to the Territorial Treasurer, to be kept by him for such owner 24 for one year; after which time if such owner has not previously claimed the amount so kept the same 25 shall form part of the general revenue fund of the Territories.

3. No hotel, boarding or lodging house keeper shall have a right to detain the trunks or personal property of any one, or to have a lien 26 thereon, for wines or spirituous or fermented liquors supplied to him or to any one else by his order.

#### *Liability of Hotel Keeper*

4. No hotel keeper shall after the coming into force of this Ordinance 27 be liable to make good to any guest of such hotel keeper any loss or injury to goods or property brought to his hotel (not being a horse or other live animal or any gear appertaining thereto or any carriage) 28, to a greater amount than \$200 except in the following cases, that is to say: 29

1. 30 When such goods or property shall have been stolen 31, lost or injured through the default or neglect of such 32 hotel keeper or any servant in his employ;

2. When such goods or property shall have been deposited expressly for safe custody with such hotel keeper:

Provided always, that in case of such deposit it shall be lawful for such hotel keeper if he thinks fit, to require as a condition to his liability 33 that such goods or property shall be deposited in a box or other receptacle fastened and sealed by the person depositing the same. 34

5. If any hotel keeper shall refuse 35 to receive for safe custody as before mentioned 36 any goods or property of his guest, or if any such 37 guest shall through any default of the hotel keeper be unable to deposit such 38 goods or property as aforesaid 39, the hotel keeper shall not be 40 entitled to the benefit of this Ordinance 41 in respect of such goods or property.

#### *Ordinance to be Posted*

6. Every hotel keeper shall cause to be kept conspicuously posted in the office and public rooms in his hotel a copy of this Ordinance printed or plainly written, and he shall be entitled to the benefits of this Ordinance in respect of such goods or property only as shall be brought to his hotel while such copy shall be posted as aforesaid. 42

#### COMMENTS

1. The main section of the Ordinance does not mention a lien.

2. The word *house* must go back to *lodging* and *boarding*, but then it goes back to *hotel* also; that gives us *hotel house-keeper*. The word *house* should be inserted after *boarding*.

3. It is not clear whether *seize* and *detain* were regarded as separate acts, or whether this is one act - a hendiadys.

The goods may be seized in the hotel and before they have been removed. If they are in the hotel they have not been removed; if they have not been removed they are in the hotel. Why say it twice? One explanation for this rather peculiar expression may be that at common law the lien existed only while the goods were in the custody of the innkeeper. If the guest managed to get them out, and returned at a later time, the innkeeper could not seize the goods for an earlier debt. If that is the explanation I would say it is too trifling a point to bother with. Some provincial statutes say *seize* only, some *detain* only and some *seize and detain*.

4. A slight grammatical slip. The *and* joins a phrase to a clause; it should not be there.

5. This whole section is loaded with *sames* and *suches*, for which appropriate pronouns should be substituted. Many verbs are in the future perfect; now the simple present is used.

6. The property must belong to the guest. At common law the lien of an innkeeper extended to any property brought to the inn by a guest, no matter to whom it belonged.

In *Cunningham Enterprises v. Vollmers*<sup>4</sup> it was held that a similar section in the Alberta statute did not abrogate a hotelkeeper's right at common law. To the same effect is the Ontario case, *United Typewriter Co. v. King Edward Hotel*.<sup>5</sup> In that case Meredith, C.J.O. said:

"The provisions of the statute are, in our opinion, supplementary to the common law, and its main purposes were: (1) to extend the right of lien which an innkeeper has to boarding house keepers and lodging house keepers, limited in their case to the property of the boarder or lodger; (2) to give, where the lien exists either at common law or by the statute, the right to sell; and (3) to limit the liability of the innkeeper to \$40 in certain cases and in certain other cases to \$5."

7. Should this not be board *or* lodging?

8. What does *responsible* mean? Does this impose absolute liability? I would omit this and rely on the general law; it is not in the Ontario statute.

9. The *in addition to* preserves the common law.

10. Up to this point there has been no mention of *charges*.

11. This sounds as though the charges were seized.
12. At the beginning there is *trunks and personal property* and now it is *baggage and property*.
13. A *guest, boarder or lodger* are nowhere mentioned; there cannot therefore be *such* guest, boarder or lodger.
14. The *such* adds nothing.
15. Again a *such*; no intended sale has been mentioned.
16. Now we have *baggage or other property*.
17. What is *such* sale?
18. Another *such*.
19. For the first time *inn* is mentioned. It must have come from the original Ontario statute when parts of it were copied.<sup>7</sup>
20. *Such* sale again.
21. The *as aforesaid* does not fit; it can only mean *due in the manner said before*, but that is senseless.
22. Advertising has not been mentioned. This is another example of careless copying. The Ontario statute requires advertising in a newspaper, but the Northwest Territories Ordinance did not.
23. The subjunctive form is no longer used.
24. An owner has not been mentioned.
25. *It* instead of *the same*.
26. This section mentions *detain* and *lien*. Does reference to a lien oust the common law?
27. The phrase seems to be misplaced; it is written this way in the English Act of 1863. As written it modifies *be liable*. Should it not modify *brought*?
28. I used brackets sparingly because of the temptation to write too long a provision. However, it is a convenient way of introducing the exception here. The alternative would be a separate subsection.
29. The *that is to say* is not needed. This whole section is a copy of the English Act of 1863.
30. Letters instead of numerals would now be used and the clauses would begin with lower case.
31. The future perfect.
32. The *such* adds nothing.

33. This raised a doubt in my mind. Suppose a guest tenders goods valued at \$500 for deposit, but when asked to place them in a receptacle decides not to. He takes the goods to his room and there they are stolen through default of the hotelkeeper. Is the hotelkeeper liable for \$200, or for nothing? If the guest had said nothing the hotelkeeper would be liable for \$200, but he now says the Ordinance frees him completely from liability.

My analysis of this Ordinance is that the proviso is misplaced. Section 5 makes the hotelkeeper liable if he refuses to accept an article for deposit, and it seems to me that the proviso in section 4 gives a valid reason for refusing. In doing this exercise I took the view that the substance of the proviso should be put into section 5 and the condition should be a condition to accepting the article for deposit.

34. Again, *the same*.

35. Future tense.

36. *As before mentioned* is unnecessary.

37. *Such* again.

38. *Such* once more.

39. *As aforesaid* is unnecessary.

40. Now it would be said *is not entitled*.

41. This illustrates again the danger in copying. As written in this Ordinance the hotelkeeper would be deprived also of his remedy under section 2. The English statute of 1863 said *benefit of this Act*, but that was a separate limitation of liability Act and was not in any way tied to an innkeeper's lien. *This Ordinance* should be *this section*.

42. This section also comes from the English Act of 1863, and was there confined to limitation of liability. In this Ordinance it applies to the second section also; that would appear to be a proper extension.

#### RETURN NO. 1

1. This Ordinance may be cited as the Hotel Keepers' 1 Ordinance.

2. In this Ordinance,

"hotel" includes boarding house, inn and lodging house 2 and  
"hotel keeper" shall be construed accordingly. 3

3. Except in respect of alcoholic beverages 4, a hotel keeper may seize and detain in his hotel the personal property of any guest who is indebted to him for board and 5 lodging.

4. Where a hotel keeper intends to seize property 6 under section 3, he shall do so before it is removed from the hotel premises; and he is responsible for its safe custody after he has seized it.

5. (1) Where three months have expired after the property of a guest has been seized and the guest has not paid his debt in full 7 the hotel keeper may, in addition to any remedy available to him, sell by public auction the property so seized 8 after having posted for a period of one week at each entrance of the hotel a notice of the proposed sale. 9

(2) A notice under this section shall state

(a) the name of the guest,

(b) the amount owed 10 to the hotel keeper.

(c) a description of the property to be sold,

(d) the time and place of sale, and

(e) the name of the auctioneer conducting the sale. 11

6. (1) Where a hotel keeper sells property under this Act 12 he may retain out of the proceeds of the sale the sums 13 owed to him by the guest for board and lodging together with 14 the expenses incurred respecting the sale and then he shall pay the remainder, if any, to the guest if he makes a demand for it. 15

(2) If, after a sale, a guest does not make a demand for the money due to him 16, the hotel keeper shall pay it to the Territorial Treasurer who shall keep it for the guest and if after the expiration of one year no one claims it, it shall form part of the fund of the Territories.

7. (1) No hotel keeper shall, after this Ordinance comes into operation, be liable to pay a greater amount than two hundred dollars in respect of loss or damage to property brought into his hotel by a guest unless the loss or damage is

(a) in respect of a live animal, its gear or a carriage. 17

(b) caused by the default or neglect of the hotel keeper, or

(c) in respect of property deposited with the hotel keeper expressly for its safe custody.

(2) A hotel keeper may, as a condition to his liability, require a guest who requests safe custody of his property to put it in a receptacle and fasten or seal it before it is accepted for safe custody.

8. A hotel keeper who refuses to accept the property of a guest for safe custody, or neglects to provide reasonable facilities for the

safe custody of property of his guests is not entitled to the protection of this Ordinance.

9. Every hotel keeper shall keep a copy of this Ordinance posted in the office, and in every public room, of his hotel and if he contravenes this section he is not entitled to the protection of this Ordinance. 18

#### COMMENTS

This is a fairly good draft. The student has grasped the substance of the Ordinance quite well, and has broken up the long section into a number of short sections and subsections. My comments are largely aimed at internal consistency and minor matters of form.

1. The Ordinance does not belong to hotelkeepers, so there need not be an apostrophe. Hotelkeepers is usually written as one word.

2. Here is a trap. The temptation is great to have this kind of a definition. However, sections 4 and 5 of the original Ordinance apply only to hotelkeepers, and not to boarding house or lodging house keepers.

3. If hotel is defined it is not necessary to say that hotelkeeper shall be construed accordingly. That follows as a matter of course.

4. This is a minor exception. I would prefer to see it later, rather than as a leading provision.

5. Should this not be board *or* lodging?

6. We need not specify an intention.

7. The word *indebted* in section 3 serves to introduce the word *debt*.

8. The *so seized* is unnecessary.

9. The *proposed* is unnecessary.

10. In subsection (1) there is *debt*, but here it is *amount owed*.

11. If it is public auction we do not need *conducting the sale*. If anything, it should be *who is to conduct the sale*.

12. Instead of setting up a case, it would be better to go directly to *out of the proceeds of the sale*.

13. See comments 7 and 10. Here we have *sums* owed.

14. Students seem to be fond of *together with* instead of simply *and*.

15. It is an application rather than a demand.

16. See comments 7, 10 and 13. Here we have *money due to him*. It would be better to use the word *debt* throughout.

17. Paragraph (a) is not the same kind of an exception as paragraphs (b) and (c). Paragraph (a) describes property, and paragraphs (b) and (c) describe circumstances. I would not put them together. For paragraphs (a) and (c) *is* is the complete verb, but for paragraph (b) it is the auxiliary. One word should not at the same time perform this double function.

18. A subtle point is missed here. Under this section, as written, if a hotelkeeper fails for one day to post the Ordinance he would be forever disentitled to the benefits of the Ordinance. He is to be disentitled only with respect to property brought to the premises while the Ordinance is not posted.

#### RETURN NO. 2

1. This Ordinance may be cited as the Hotelkeepers' Ordinance.

2. (1) A hotel or boarding house or lodging house keeper

(a) may detain 1 in his hotel or house or on his premises, before they have been removed therefrom, the personal property of a guest, boarder or lodger 2 indebted to him for board and lodging or either 3, and

(b) is responsible for the safekeeping of the property so detained.  
4

(2) A keeper 5 may, in addition to all other remedies provided by law, where the debt of a guest, boarder or lodger 6 remains unpaid for three months or more after the detention of his property, sell such property by public auction, as provided in subsection (3) 7 of this section.

(3) Prior to the sale of the detained property the keeper shall post and keep posted for at least one week, on the outside of the main door of the hotel or house, a notice of the intended sale, stating 8

(a) the name of the guest, boarder or lodger,

(b) the amount of the indebtedness,

(c) a description of the detained property to be sold,

(d) the time and place of sale and

(e) the name of the auctioneer.

(4) After the sale 9 the keeper

(a) may apply the proceeds in payment of the debt due to him and the cost of advertisement and sale and

(b) shall pay over any surplus to the owner of the auctioned property if an immediate 10 application is made by him.

(5) Where no application is made as required 11 by paragraph (b) of subsection (4) of this section, the keeper shall forthwith pay the surplus to the Territorial Treasurer, who shall keep it for the owner of the auctioned property, 12 for at least one year, after which time if he has not previously claimed 13 it, it shall form part of the general revenue fund.

3. No keeper shall detain the personal property of a guest, boarder or lodger, or have a lien thereon, for any debt incurred due to 14 the purchase of an alcoholic or a fermented beverage supplied to him or to anyone else by his order.

#### *Liability of Hotel Keeper*

4. (1) No hotel keeper is liable to compensate a guest for any loss of or injury to personal property brought to his hotel (not being a horse or other live animal or any gear appertaining thereto or a carriage), for a sum greater than two hundred dollars, except

(a) where the property is 15 stolen, lost or injured through the default or neglect of the hotel keeper or his servant or

(b) except as provided in subsection (2) of this section, where the property is deposited by the guest for safe custody with the hotel keeper.

(2) In the case of a deposit made under the provisions of paragraph (b) of subsection (1) of this section, 16 the hotel keeper may require as a condition of his liability that such property is 17 deposited in a box or other receptacle and fastened and sealed by the guest.

5. If a hotel keeper refuses to receive the personal property of a guest for safe custody, or if the guest through the default of the hotel keeper is unable to so deposit his property, the hotel keeper is not entitled to the benefit of this Ordinance 18 in respect of that property.

6. Every hotel keeper

(a) shall keep conspicuously posted in the office and in every public room in his hotel a printed or plainly written copy of this Ordinance and

(b) is entitled to the benefits of this Ordinance in respect of such property only 19 as are 20 brought to his hotel, while copies of this Ordinance are so posted.

#### COMMENTS

1. Here *detain* only is mentioned, as in some of the provincial Acts.

2. It would be enough to say *person* instead of *guest, boarder or lodger*. The two successive *excepts* are clumsy. It would be better to say here *subject to*.

3. If it were *board or lodging* it would not be necessary to say *or either*.

4. Paragraph (b) differs so much from paragraph (a) that it is not suitable for combination.

5. 6. The word *keeper* does not connect with subsection (1), or with the *guest, boarder or lodger* following.

7. Subsection (3) does not provide for a sale; it prescribes a condition precedent to the sale.

8. I prefer *setting forth* to *stating*.

9. Of course it must be after the sale. I would prefer to say *out of the proceeds of the sale there shall be paid*.

10. The word *immediate* is too strict.

11. Paragraph (b) does not *require* an application.

12. The original Ordinance says *person entitled thereto*. I think this was deliberately vague because he might be a lessee or bailee rather than the owner.

13. In many exercises as we have seen in earlier chapters students showed a fondness for *claiming*. A claim is not a request or an application.

14. Authorities on language have not yet accepted *due to* as a preposition. There must be a form of the verb *to be* - something must be due to something. Eventually *due to* may be recognized as *is owing to*.

15. The past tense would be better.

16. The deposit was not *made under* the provision referred to.

17. See comment 15.

18. As indicated in my opening comments I think this was a mistake in the original.

19. The word *only* can be troublesome. Here it should be *only such property*.

20. Singular instead of plural.

### RETURN NO. 3

1. This Ordinance may be cited as The Hotel Keepers Ordinance.

### *Lien of Hotel or Boarding House Keeper*

2. Every hotel, boarding or lodging house keeper may seize and detain on his premises the goods or personal property 1 of any guest who owes 2 him for board and 3 lodging and it is his responsibility to keep the seized property safely. 4

3. Where the debt 5 remains unpaid for three months after the seizure the Hotel Keeper may sell by public auction the property seized if he,

(a) posts on the outside of the door of the Hotel, boarding or lodging house, a Notice of the intended sale for a period of one week, 6

(b) states the name of the guest, boarder or lodger

(c) the amount of his indebtedness,

(d) gives a description of the property to be sold,

(e) states the time and place of sale and

(f) the name of the auctioneer.

4. After the sale, 7 he may deduct from the proceeds of sale the amount owed to him and the cost of the sale and advertisement. 8

5. (1) Any surplus shall be paid to the person entitled to it upon his applying for it, and where no application has been 9 made, the surplus shall be paid to the Territorial Treasurer and it shall be kept for the owner for up to a period of one year.

(2) If the money remains unclaimed 10 after a year, the amount kept shall form part of the general revenue fund of the Territories.

6. Section 2 does not apply to debts owed for wines or spirits or fermented liquors supplied to a guest or to any other person on the order of the guest.

### *Liability of Hotel Keeper*

7. (1) No Hotel Keeper shall after the coming into force of this Ordinance be liable to make good to any guest, for any loss or injury to goods or property brought to his hotel, if the amount in value of such goods or property exceed \$200, 11 unless 12

(a) where the property has been 13 lost or stolen through the default or negligence of the hotel keeper, his servant or agent,

(b) where the property has been deposited expressly for safe custody with the Hotel Keeper and for such a deposit, the Hotel Keeper may if he thinks fit require as a condition to his liability,

that the property is deposited in a box or other receptacle fastened and sealed by the depositor. 14

(2) This section does not apply to horses or other live animals or any gear appertaining to them or to any carriage. 15

8. Where a Hotel Keeper refuses to receive for safe custody any property of his guest or if a guest through the default of the Hotel Keeper is unable to deposit his property the Hotel Keeper is not entitled to the benefit of this Ordinance.

#### *Ordinance to be Posted*

9. Every hotel keeper shall keep conspicuously posted in the office and public rooms in his hotel a copy of this Ordinance, printed or plainly written and he is entitled to the benefits of this Ordinance in respect only for property brought into his hotel. 16

#### COMMENTS

1. Goods are personal property.

2. Owes him what? Better to say *is indebted to him*.

3. Board or lodging.

4. I would prefer to state the *safe keeping* requirement (if I said it at all) separately.

5. The debt is not identified. I would phrase this - *where the debt for which property was seized by a hotel, boarding house or lodging house keeper remains unpaid ..... he may sell, etc.*

6. Paragraph (a) should be in the opening words. *If he posts a notice, etc., setting forth*. For (b), (d) and (e) the subject of the verb is *he* rather than the notice, and for (c) and (f) there is no verb.

7. It could not be before the sale.

8. There is no mention of an advertisement. As already indicated this word comes from the Ontario statute where there was express provision for advertising. Also, the *he* and *him* are unidentified.

9. *Was made*, instead of *has been made*.

10. Here we have claiming again. Subsection (1) says *application*. Hence in subsection (2) it should be *is not applied for*.<sup>8</sup> After a year from when?

11. The liability limitation was misunderstood.

12. It should be *except* instead of *unless*.

13. The simple past instead of the present perfect should be used here and in (b).

14. The depositing provision should be separate.

15. This would be a better fit for people. Generally, I would prefer *in respect of*.

16. Only in respect of property brought to his hotel *while it is so posted*.

#### RETURN NO. 4

##### 1. In this Act 1

"customer" means guest, boarder or a lodger 2.

"Hotel" includes inn, boarding or lodging house. 3

"Hotelkeeper" includes innkeeper, boarding or lodging house keeper 4.

"Property" means trunks and other personal property brought into a hotel by a customer 5.

2. (1) A hotelkeeper may seize the property of a customer who is unable to settle his hotel expenses 6 in respect of boarding and lodging.

(2) Any property seized in pursuance to subsection (1) shall be kept by the hotelkeeper who shall be responsible for its safe custody.

3. (1) A hotelkeeper who seizes property in accordance with subsection (1) 7 shall take lawful steps 8 to recover from the customer any amount owed to him.

(2) Where after three months of the seizure the debt remains unpaid the hotelkeeper shall in addition to any remedy provided by law sell by public auction the property so seized. 9

(3) Where a hotelkeeper decides 10 to sell property seized under subsection (2) he shall for a period of one week post outside the door of the hotel a notice containing the following particulars

- (a) a declaration of his intention to sell,
- (b) the name of the customer,
- (c) the amount of the debt,
- (d) a description of the property to be sold,
- (e) the time and place of the sale, and

(f) the name of the auctioneer.

4. (1) The proceeds derived from the sale shall be used **11** in

(a) settling the debt,

(b) defraying the cost of the advertising, **12** and

(c) paying for the expenses incurred in the sale.

(2) The remainder of any amount **13** left after payment of the items in subsection (1) shall be paid to the customer if he applies for it.

(3) Where the customer fails to apply immediately for the remainder the hotelkeeper shall pay the amount **14** forthwith to the Territorial Treasurer.

(4) The Treasurer shall keep the amount so paid to him for the customer for a period of one year.

(5) If at the expiration of one year the amount paid to the Treasurer remains unclaimed **15** it shall form part of the general revenue fund of the Territory.

5. Subsection 2(1) shall not **16** apply to any debt incurred by a customer in respect of any wine or alcoholic drink supplied to him or by his order to any other person.

6. (1) On **17** the coming into force of this Act no hotelkeeper shall pay **18** an amount exceeding \$200.00 for the damage or loss of property brought into a hotel except **19** the property was damaged or lost in the following circumstances

(a) where the damage or loss was caused by the default or negligence of the hotelkeeper or by his servant.

(b) where the property was expressly **20** deposited with the hotelkeeper for its safe custody.

(2) Subsection (1) shall not apply to a horse or other live animal or the gear belonging to such animal or a carriage. **21**

(3) A hotelkeeper may in the case of paragraph (b) **22** demand as a condition of his liability that the property be deposited in a box or a receptacle and sealed by the person making the deposit.

7. Where a hotelkeeper refuses to accept for safe custody a property belonging to a customer or where by the default of the hotelkeeper a customer is unable to deposit his property the hotelkeeper shall not be entitled to receive any benefit conferred by sections 1 and 2. **23**

8. (1) Every hotelkeeper shall cause to be posted in a conspicuous place in the office as well as the public rooms in the hotel a printed or a plainly written copy of this Act.

(2) No hotelkeeper shall obtain the benefits conferred by this Act in respect of property brought into a hotel unless at the time the property was brought he has complied with subsection (1). 24

#### COMMENTS

1. None of these definitions are needed.
2. *Person* is enough.
3. A hotel or inn does not need to be defined.
4. The self-dug trap again. This definition would extend the limitation of liability provision to boarding house or lodging house keepers.
5. Are trunks not personal property?
6. What are hotel expenses? Why *settle* instead of *pay*?
7. Presumably subsection (1) of section 2 is intended.
8. This is a command to *take lawful steps to recover*. Is the hotelkeeper compelled to sue?
9. This is a command to sell. The hotelkeeper might be generous and waive the debt.
10. The decision of a hotelkeeper need not be mentioned.
11. Instead of saying that the proceeds shall be used in doing something, it would be better to say that out of the proceeds there shall be paid.
12. Advertising is a hangover from the Ontario statute of 1874.
13. It is *remainder* or *amount left*, but not *remainder of any amount*.
14. Here it is *remainder* and *amount*.
15. *Claim* again.
16. *Does* not apply.
17. *After*, rather than *On*.
18. Why a prohibition against a generous hotelkeeper?
19. All the opening words after *except* should be deleted; paragraphs (a) and (b) describe circumstances.
20. Why *expressly*? There cannot be an implied deposit.
21. See comment 15 under Return No. 3.

22. It is the case *described* in paragraph (b) of *subsection (1)*.

23. It should be section 6.

24. As this section is written a hotelkeeper could post the Ordinance for one day in all his rooms, and then take them down. Therefore, he has complied with subsection (1) and subsection (2) does not disentitle him to the benefits of the Act (Ordinance).

#### RETURN NO. 5

##### *Short Title.*

1. This Ordinance may be cited as the *Hotel Keepers' 1* Ordinance.

##### *Interpretation*

2. In this Ordinance

"hotel keeper" means any person who manages a hotel, boarding house or lodging house, and includes his agent. 2

##### *Lien of Hotel Keeper.*

3. (1) Every hotel keeper may detain on the premises under his management 3 the personal property found there 4 of any person indebted to him for the provision of 5 board and lodging, but not for the provision of alcoholic beverages, supplied at the request of the person by the hotel keeper. 6

(2) Where the indebtedness of a person to the hotel keeper 7 remains outstanding three months or more following the date of 8 the detention of his personal property, the hotel keeper may sell that person's property 9 by public auction.

4. (1) No sale by public auction of the personal property of a person indebted to a hotel keeper shall be made until the expiration of one week after the posting 10 on the outside of the door of the premises where the property is detained of a notice of the intended sale stating the name of the indebted person, the amount of his indebtedness, a description of the property to be sold, the time and place of the sale and the name of the auctioneer.

4. (2) The proceeds of the sale shall be used to pay

(a) first, the costs of the advertising and the sale,

(b) secondly, the amount due the hotel keeper for board and lodging only

and the balance, if any, shall be paid over

(c) to the person who owned the property immediately prior to the sale if his application for the balance is made at that sale, or

(d) to the general revenue fund of the Territories to form a part of that fund unless the person who owned the property immediately prior to the sale makes an application to the Territorial Treasurer for the balance at any time before the expiry of one year from the date of the sale. 11

#### *Liability of Hotel Keeper.*

5. (1) No hotel keeper shall be 12 liable to compensate any person for the loss of, or injury to, his personal property to an amount greater than two hundred dollars unless

(a) the property lost or injured is a horse or other live animal, or the gear or carriage appertaining to that animal, 13

(b) the property has been 14 lost or injured while detained by the hotel keeper for the indebtedness of the person to him,

(c) the property has been lost or injured through the negligence of the hotel keeper or his employees, or

(d) the property has been lost or injured following

(i) the express deposit of it with the hotel keeper for safekeeping, or

(ii) the hotel keeper's refusal to accept it for safekeeping. 15

5. (2) Where the personal property of any person is expressly 16 deposited for safekeeping with the hotel keeper, the hotel keeper may require as a condition to his liability that the property be deposited in a box or other receptacle fastened and sealed by that person.

#### *Ordinance to be Posted.*

6. No hotel keeper shall be entitled to the benefits of this Ordinance unless there are printed or plainly written copies of this Ordinance conspicuously posted in the office and public rooms of the premises under his management. 17

#### COMMENTS

1. One word without the apostrophe would be better.

2. Again, the self-dug trap. This definition extends the limitation of liability provision to keepers of boarding and lodging houses.

3. The idea of *management* should not be introduced. Hilton hotels *manage* CNR hotels; who has the right to detain - Hilton or CNR?

4. No mention of *finding* need be made.

5. The *provision of* is unnecessary.

6. I would put this exception later. It is a minor provision that detracts from the main thrust of the enactment.<sup>9</sup>

7. Better connection would be obtained by saying *where the debt for which a hotelkeeper detained property*, etc.

8. *After* instead of *following the date of*.

9. The *property*, rather than *that person's property*.

10. The notice is to be posted *for* one week. As written a hotelkeeper would comply with this requirement if he posted the notice and immediately took it down.

The posting requirement should be a condition to the right to sell. If section 4 is not complied with, there is the question whether a sale is valid so that the purchaser would get a good title.

11. There is too much in this section. Payment of the surplus should be dealt with in a separate section or subsection. I do not like this kind of paragraphing.

12. *Is* liable.

13. See comment 17 under Return No. 1.

14. Here and in paragraphs (c) and (d) the simple past tense would be more correct.

15. Paragraph (d) should be a separate subsection.

16. See comment 13 above.

17. There should be a reference to property. As written, a hotelkeeper could detain property while the Ordinance is posted, but if he then closes shop and takes down the copies to re-decorate, he would lose his right to sell.

## RETURN NO. 6

### PART I

#### *Short Title*

1. This Ordinance may be cited as the "Hotelkeepers Ordinance".

## PART II

### *Definitions*

2. (a) "hotel means a hotel, motel, boarding house, lodging house or rooming house. 1

(b) "hotelkeeper" means a person who owns or operates a hotel.  
2

## PART III

### *Hotelkeepers Lien*

3. (1) If a person who is indebted to a hotel for board or lodging has luggage or personal property on hotel premises, 3 the hotelkeeper may seize and retain these goods until he receives payment or until there is a sale in accordance with this Ordinance. 4

(2) A hotelkeeper who has retained goods for three months without receiving payment 5 may sell the goods by public auction in accordance with this Ordinance.

(3) A hotelkeeper is responsible for damages 6 to retained goods.

4. (1) A notice 7 of sale shall contain: the real or apparent name of the owner of the retained goods; the amount of indebtedness; a description of the goods to be sold; the time and place of sale; the name of the auctioneer. 8

(2) A notice of sale shall be posted on the outside of the hotels main entrance for at least one week prior to the sale. 9

5. (1) The proceeds of a sale under this Ordinance shall be applied: firstly, to reimburse the hotelkeeper for debts; secondly, to pay for the costs of sale; thirdly, to any person requesting and legally entitled to payment; fourthly, to the Territorial Treasurer.  
10

(2) If, after holding the balance 11 of the proceeds for one year, the Territorial Treasurer receives no valid request for payment the sum then remaining shall be paid into the general revenue fund of the Territories.

6. Notwithstanding anything in this Ordinance, a hotel-keeper shall not 12 seize and retain any goods in respect of a debt due for the supply of intoxicating beverages.

7. Nothing in this part is a bar to any civil action.

## PART IV

### *Hotelkeepers Liability*

8. A hotelkeeper's liability to a guest for loss or damage to goods or property is limited to a maximum of two hundred dollars unless:

- (a) the loss or damage is in respect of a carriage or of an animal or its equipment;
- (b) the loss or damage is occasioned through the default or neglect of the hotelkeeper;
- (c) the goods or property were expressly deposited for safekeeping with the hotelkeeper; or
- (d) the hotelkeeper refused to receive the goods or property for safekeeping or was responsible for the guest being unable to deposit them for safekeeping. 13

9. Notwithstanding section 8, a hotelkeeper may refuse to accept goods or property that have not been locked or secured in a container by the guest seeking to deposit them for safekeeping. 14

## PART V

### *Posting of Ordinance*

10. (1) Every hotelkeeper shall display a copy of this Ordinance in a conspicuous fashion 15 in the offices and public rooms of the hotel.

(2) Notwithstanding anything in this Ordinance, a hotelkeeper who fails to display a copy of this Ordinance as required by paragraph (a) shall not be entitled to plead or rely on the provisions of this Ordinance in any action. 16

## COMMENTS

1. The section should open with *In this Ordinance*. This definition again is the self-dug trap.

2. This definition merely gives the ordinary meaning.

3. The debt is owing to the hotelkeeper and not to the hotel. Of course, if the person does not have property on the premises there is nothing for the hotelkeeper to seize. The whole structure of this section is faulty. The idea to be expressed is simply that a hotelkeeper may on the premises seize the property of a person who is indebted to him for board or lodging.

4. This last clause *until there is a sale* need not be said.

5. The *without* goes to *retained goods*. What this draft says is that a hotelkeeper who has retained goods for three months without receiving payment for *retaining* the goods may sell.

6. What about loss?

7. There has been no mention of a notice of sale.

8. This subsection does not connect with anything that has gone before; the goods and indebtedness are not identified.

9. Hotel's instead of hotels. In general it is better to use the possessive phrase rather than the possessive case. Difficulties or mistakes can arise in dictating, transcribing or printing, as, for example, *company's*, *companies*, *companies'*.

10. Again, this subsection does not connect with anything. The last three words should be a separate statement; as written it says that the proceeds of the sale shall be applied to the Territorial Treasurer.

11. There has been no mention of a balance.

12. This is a prohibition instead of denial of permission. As may be seen in my redraft I think it is best to exclude this kind of a debt.

13. There is too much in this section. Paragraphs (a) and (d) should be separate provisions.

14. As written the hotelkeeper could refuse to accept all goods; when tendered they are not locked or secured.

15. Conspicuously, or in a conspicuous place?

16. There is no action and there are no pleadings.

#### RETURN NO. 7

1. This Act may be cited as the Hotel Keeper's Act.

2. In this Act "food" does not include any alcoholic beverage. 1

3. In addition to all other remedies provided by law a keeper of a hotel, boarding-house or lodging-house may detain in it the personal property of a person who is indebted to him for food and lodging or either of them, 2 and the safekeeping of the property so detained is the responsibility of the keeper. 3

4. When a keeper has detained a person's personal property pursuant to section 3 he may sell it by public auction

(a) if that person's indebtedness remains outstanding after the expiration of three months from the date his indebtedness arose, and

(b) if notice of the sale has been given, in the manner prescribed in section 5, not less than one week in advance of the sale. 4

5. Notice of the sale shall be given by the keeper 5 posting a notice in Form A of the Schedule on the outside door of the hotel, boarding house, or lodging house and ensuring 6 that it remains so posted for a continuous period of seven days.

6. From the proceeds of the sale the keeper shall pay

(a) firstly, the amount of the indebtedness, and

(b) secondly, the costs of Notice and of Sale, and

(c) thirdly, any surplus remaining to the person entitled to the surplus if that person makes application for it forthwith after the sale; 7 and if no such application is made the keeper shall pay the surplus to the Territorial Treasurer who shall retain it for payment to the person entitled, but if after the period of one year no claim to the surplus has been made it shall form part of the general revenue fund of the Territories. 8

#### *Limitation of Liability of Hotel Keeper*

7. (1) In all actions arising after the commencement of this Act the liability of a hotel keeper to a guest of the hotel for loss or injury to the guest's property brought to the hotel premises is limited to a total of two hundred dollars, except

(a) where the property is a guest's vehicle, or

(b) where the loss or injury arose as a result of the negligence of the hotel keeper or his servants, or

(c) where a hotel keeper has expressly accepted a guest's property for safekeeping, or

(d) where by reason of the hotel keeper's refusal or default a guest is unable to deposit properly packaged property with the hotel for safekeeping. 9

(2) In this section "properly packaged" means packaged in a closed container that is sealed by the guest. 10

8. Every hotel keeper shall cause to be kept conspicuously posted in the office and public rooms in his hotel printed, or plainly written copies of this Act, and this Act does not apply to personal property brought to a hotel where copies of this Act were not so posted. 11

## COMMENTS

1. This is a very indirect way of saying that the Act does not apply in respect of a debt for any alcoholic beverage. In any case the definition, in my judgment, makes this minor exception too prominent.

2. If food *or* lodging were said then *or either of them* would not be needed. A glass of soda water, for which a charge is made, is neither a food nor an alcoholic beverage.

3. The last clause should be a separate provision.

4. This section is poorly structured. The essence of the law is that if the debt is outstanding after three months the hotelkeeper may sell. The section should begin with the content of paragraph (a).

There is a subtle point of law involved here. The courts have held that a hotelkeeper who seizes property is exercising a common law right and is not acting pursuant to the Act. In this draft the result would be that this sale section would not apply to a hotelkeeper.<sup>10</sup>

5. The words *the keeper* could be dropped. In any case it should be *The keeper's* or *by the keeper by posting*.

6. Must he stand guard, day and night?

7. Paragraph (c) does not fit into the enumeration; provision for the surplus should go out to the margin.

8. This last part should either go out to the margin or be written as a separate subsection.

9. As in other returns, there is too much in this subsection. Paragraphs (a) and (d) are not the same kinds of cases as (b) and (c) and should be written as separate provisions.

10. This does not express a condition, and it is a very indirect way of trying to say that the guest is to package and seal the goods.

11. Every hotel would fall into this description, because there must have been a time when copies of the Act *were not so posted* there.

## RETURN NO. 8

1. This Ordinance may be cited as the Hotelkeepers Ordinance.

2. In this Ordinance,

“charge” means the price of any food, drink, or accommodation furnished by a hotel-keeper to a guest or on order of a guest, 1

“hotel” includes a boarding-house, lodging-house, and an inn, 2

“hotel-keeper” includes a boarding-house keeper, a lodging-house keeper, and an innkeeper. 3

3. (1) A hotel-keeper is entitled to a lien **4** on the personal property, found on the premises of the hotel, of a guest who defaults in payment of his **5** charge, excluding the costs of wines or spirits, owed to the hotel-keeper.

(2) The personal property of a guest that is subject to a lien described in subsection (1) shall be kept **6** with reasonable care and safety.

4. (1) If a guest does not pay his charge, owed to a hotel-keeper, for **7** three consecutive months after the hotel-keeper has placed **8** the personal property of the guest under lien, then the hotel-keeper is entitled, in addition to any other remedy, to sell the property by auction after the expiration of one week from **9** his posting up on the outside of the main door of his hotel a notice in accordance with subsection 2. **10**

(2) A notice shall contain

(a) the name of the guest,

(b) the charge owed by the guest to the hotel-keeper,

(c) a description of the personal property of the guest that is to be sold at auction,

(d) the time and place of the auction sale, and

(e) the name of the auctioneer.

5. (1) The proceeds realized by a sale of the personal property of a guest by a hotel-keeper shall be used to satisfy **11**

(a) the charge owed by the guest to the hotel-keeper, excluding the cost of any wine or spirits,

(b) the costs of the hotel-keeper in conducting the sale,

and the remaining proceeds shall be paid **12**

(c) to the person entitled to them, upon his making application within a reasonable time after the sale, or

(d) to the Territorial Treasurer, if no application is made.

(2) The Territorial Treasurer shall keep any surplus proceeds **13** paid to him under paragraph (1)(d) until they are claimed **14** by the person entitled to them, but if no person claims them within one year, they shall be paid into the General Revenue Fund of the Territories.

6. No hotel-keeper shall be liable for the theft of, loss of, or damage to the personal property of a guest, to an amount exceeding two hundred dollars, except where the property

- (a) was a live animal or gear appertaining thereto,
- (b) was a carriage,
- (c) was stolen, lost, or damaged by reason of the negligence of the hotel-keeper or his servant,
- (d) was deposited with the hotel-keeper for safe custody,
- (e) was refused to be received for safe custody by the hotel-keeper, unless the guest was unwilling or unable to place the property in a fastened and sealed container after being requested to do so by the hotel-keeper as a condition to his liability, or
- (f) was incapable of being deposited for safe custody with the hotel-keeper by reason of his default. 15

7. A hotel-keeper is entitled to the benefits of this Ordinance only after he has conspicuously posted in the office and in each public room of his hotel a legible copy of this Ordinance and the benefits apply only with respect to personal property brought to his hotel after he has so posted this Ordinance. 16

#### COMMENTS

1. The word *charge* does not strike me as being particularly appropriate.

2. The trap again.

3. The trap repeated.

4. This gives a lien. An innkeeper (hotelkeeper) has a common law lien.

5. The *charge* is not something that belongs to the guest.

6. Kept by whom?

7. This seems to imply that the charge must be paid three times. What is meant is that if the charge remains unpaid for three months.

8. How is it *placed* under lien? The whole purpose of this Ordinance is to give a right to seize (or detain), but nowhere in this draft is that said.

9. The posting provision should be more prominent - *after a notice has been posted for at least one week.*

10. If the section ended with *a notice setting forth* then it could continue with the paragraphs in subsection (2).

11. Why not *pay* instead of *satisfy*.

12. It would be better to write paragraphs (c) and (d) as a separate subsection.

13. In subsection (1) it is *remaining proceeds* and here *surplus proceeds*.

14. *Claiming* again. Subsection (1) says *application*.

15. There is far too much in this section. See comments on earlier returns.

16. While so posted.

#### GENERAL COMMENTS

In preparing any draft one should start with the very essence of the desired law. This is the foundation on which the statute or ordinance is built. There are two distinct parts to this Ordinance, as we have seen from its origins. The essence of the first part is very simple, namely, a hotelkeeper may seize property and sell it. Now we build on that, and add boarding house keepers and lodging house keepers. The property must be identified - property of a person (we do not need to say guest) who is indebted for board or lodging. The right to seize existed at common law only while the property was still on the premises.

The right to sell is a new right, and it exists in addition to any other remedy. It is important to say so, for otherwise it would be open to the courts to say that the remedy given is an exclusive one.<sup>11</sup> The right to sell arises only after a lapse of time and it is conditional on the posting up of a notice of sale. Provision must then be made for distribution of the proceeds.

These ideas must be clearly formulated before their expression is attempted.

The second theme of the Ordinance is the limitation of liability. As we have seen, in England this was a separate statute, and is not related to the seizure and sale provisions.

We can now write the Ordinance as follows:

1. This Ordinance may be cited as the Hotelkeepers Ordinance.

#### *Seizure and Sale of Property for Debt*

2. (1) A hotel, boarding house or lodging house keeper may seize and detain 1 the property of a person who is indebted to him for board or lodging before it is removed from the hotel or house premises. 2

(2) This section does not apply in respect of a debt for wine or for spirituous or fermented liquor. 3

3. (1) Where the debt for which a hotel, boarding house or lodging house keeper seized property 4 remains unpaid for three

months after its seizure, he may, in addition to any other remedy 5, sell the property by public auction after keeping posted for at least one week prior to the sale on the outside of the door of his hotel or house a notice of intended sale setting forth 6

- (a) the name of the debtor,
- (b) the amount of the indebtedness,
- (c) a description of the property to be sold,
- (d) the time and place of sale, and
- (e) the name of the auctioneer.

(2) The proceeds of the sale of property 7 shall be applied in payment first of the debt for which the property was seized and then of the costs of the sale, and the surplus, if any, shall be paid to the person entitled to it 8 upon application by him.

(3) If no application for the surplus 9 is made within a reasonable time after the sale it shall be paid to the Territorial Treasurer and held by him for a period of one year for the person entitled thereto 10, after which, if it has not been applied for, it shall be paid into and form part of the General Revenue Fund of the Territories.

#### *Liability of Hotel Keepers*

5. (1) No hotelkeeper is liable for loss of or damage to property brought to his hotel by a guest after the coming into force of this Ordinance to a greater amount than two hundred dollars, except in the following cases:

- (a) where the property was stolen, lost or damaged through the fault or neglect of the hotel keeper or any person in his employ, or
- (b) where the property was deposited with the hotel-keeper for safe custody.

(2) A hotelkeeper is not entitled to the benefit of this section 11 in respect of property that he refused to accept for safe custody or that a guest was through the default of the hotelkeeper unable to deposit for safe custody, but a hotelkeeper may require as a condition to his accepting property for safe custody that it be placed in a box or other receptacle and fastened and sealed by the guest. 12

(3) This section does not apply in respect of a horse or other live animal, any gear appertaining thereto or any carriage. 13

### *Posting of Ordinance*

6. Every hotelkeeper shall keep a copy of this Ordinance, printed or plainly written, conspicuously posted in the office and public rooms of his hotel, and he is entitled to the benefit of this Ordinance only in respect of property brought to his hotel while such copies are so posted.

### COMMENTS

1. This could be *seize* or *detain* or *seize and detain*. It does not much matter. The original said *seize and detain in his hotel*, which implies that the property must be kept in the hotel or house. We could express that idea by saying *may on his premises seize and detain*, but the property might be valuable and would be better kept in a bank safety deposit box.

2. The important point, and this comes from the common law, is that the property must be seized before it is taken away. If, for example, a guest managed to get his leather luggage out of the hotel without paying his bill, and later he or someone else brought that same luggage back, it could not be lawfully seized for the earlier debt.

According to the decisions the purpose of this section was to confer on boarding house and lodging house keepers the right to seize property of the guest, but that does not replace the common law right of an innkeeper (hotelkeeper) to seize any property brought to the hotel. If this section were intended to codify the common law then the property would have to be defined as property *brought* to the hotel or house.

In this redraft I have omitted the safe-keeping provision; the common law will take care of that. If it is included I would say that a person who seizes property is responsible for its safekeeping while it is in his custody.

3. The original denies the right of seizure. It is easier and simpler to exclude the debt.

4. This language identifies the debt, the keeper and the property and connects them with the first section. This is what I mean by vertical and horizontal connection.

The important fact here is that the debt remains unpaid for three months. That fact should therefore be stated first. There should *not* be added *pursuant to section 2*, as was done in some returns, because the section would then not apply to a hotelkeeper who exercises his common law right to seize property not belonging to the guest.

5. It is essential to state that the remedy given is an additional one.

6. The section could end with the words *upon complying with this section*, followed by another subsection requiring the notice to be posted. By doing it as I have written it, we avoid repeating *hotel, boarding house or lodging house keeper*, and we also avoid use of the command *shall*.

7. The words *pursuant to this section* could be inserted, but are really not needed. The context identifies the sale and the property. Costs of advertising have been omitted because this came from the old Ontario statute where newspaper advertising was expressly required; there is no advertising here. Some costs might be incurred in posting up the notice, but they would be included in *costs of the sale*.

8. This was no doubt deliberately made vague. At least in the case of a hotel, the guest might not be the owner of the property seized.

9. Here, *the surplus* and *the sale* are sufficient identification without a specific cross reference.

10. It is essential to say that the surplus be held *for* the person entitled. In some drafts it was said that the surplus was to be held for one year; it could therefore not be paid to the person entitled until after one year even if he applied for it sooner.

11. The original said *this Ordinance*. That was obviously a mistake; originally in England this section was a separate statute.

12. I have moved the proviso into this subsection for the reasons given earlier.

13. This subsection would now be obsolete. I would prefer to make it a separate subsection rather than an insertion in the main section.

#### EXERCISES

The following additional students' returns are given as exercises.

##### EXERCISE NO. 1

1. This Ordinance may be cited as the Hotel Keepers' Ordinance.

##### *Definitions*

2. In this Ordinance,

"establishment" includes any hotel, inn, boarding house or lodging house;

"hotel keeper" includes the keeper of any establishment.

##### *Lien of Hotel Keeper*

3. (1) Subject to subsection (4), every hotel keeper who has furnished board and lodging to any person (in this Ordinance, called a guest) and has not been reimbursed the value or price thereof to which he is entitled, has the right to seize and retain in his establishment all the personal property including baggage in the

possession of the guest that he finds on the premises of the establishment.

(2) The right of retention of the hotel keeper described in subsection (1) subsists until the hotel keeper has been reimbursed in full the value or price of the board and lodging to which he is entitled.

(3) The hotel keeper is responsible for the safe keeping of the property that he has seized under the authority of subsection (1), without regard to the limitation of liability provided for in section 5, until he has returned the property to the guest or it has been disposed of according to law.

(4) For the purposes of subsections (1) and (2), the value or price of board and lodging to which the hotel keeper is entitled to be reimbursed does not include the value or price of any wine or spirituous or fermented liquor furnished by the hotel keeper to the guest or to anyone else at the request of the guest.

4. (1) Where at least three months have passed since the seizure of property authorized by subsection 3(1) and the right of retention of the hotel keeper is still subsisting, the hotel keeper may, without prejudice to any other remedy provided by law, sell the property by public auction, upon complying with the requirements mentioned in subsections (2) and (3).

(2) Throughout the entire week preceding the sale a notice of the sale must be displayed outside the main door of the establishment in which the property is being retained.

(3) The notice must state the name of the guest, the amount of his indebtedness, a description of the property to be sold, the time and place of sale and the name of the auctioneer.

(4) The hotel keeper must apply the proceeds of sale in payment of the amount due to him by the guest for board and lodging, or any part thereof still subsisting, as well as the costs of advertising and of the sale.

(5) The hotel keeper must pay the remainder, if any, of the proceeds of sale to the person entitled thereto upon an application made to him therefore forthwith after the sale, he must pay over the remainder, without delay, to the Territorial Treasurer who must keep the money for the person entitled thereto for a period of one year, after which time the money forms part of the general revenue fund of the Territories.

#### *Liability of Hotel Keeper*

5. (1) After the coming into force of this Ordinance, the liability of any hotel keeper for the loss, injury, destruction or theft of

property brought to the premises of his establishment by any of his guests is limited to \$200, except where

(a) the property is a horse or other live animal or any gear appertaining thereto, or any carriage,

(b) the property has been lost, injured, destroyed or stolen through the wilful act, default or neglect of the hotel keeper or any servant in his employ, or

(c) the property has been deposited with the hotel keeper for the express purpose of safe keeping.

(2) Where the hotel keeper so requires, the exception to the limitation of his liability in paragraph 1(c) does not apply unless the property has been placed in a box or other receptacle that has been fastened and sealed by the person depositing the property with the hotel keeper.

(3) Where a hotel keeper refuses to receive the property of any of his guests for the express purpose of safe keeping, or through his default or neglect renders it impossible for a guest to deposit the property with him, he is not entitled with respect to that property to the benefit of the limitation of liability described in subsection (1).

#### *Displaying of Ordinance*

6. Unless a copy of this Ordinance, printed or written legibly, is displayed in the office and public rooms of the establishment of a hotel keeper during the entire period of time that the property is in the establishment, the hotel keeper is not entitled to the benefits of this Ordinance in respect of that property.

#### EXERCISE NO. 2

1. This Act may be cited as the Hotelkeepers Act.

2. In this Act

“hotel” means any establishment held out as offering sleeping accommodation with or without food and refreshments to the public for a money payment; and includes boarding and lodging houses;

“hotelkeeper” means the owner or other person responsible for the management of a hotel; and

“guest” means any person who has taken up accommodation at a hotel (that is within the meaning of this Act.)

3. (1) A hotelkeeper has a right of lien over the goods or personal property of a guest for any outstanding debt incurred by the guest at the hotel.

(2) The right of lien is exercisable only over goods or personal property of the guest that is deposited with the hotelkeeper for safe custody or is at the hotel at the time of the exercise of the right of lien.

(3) The right of lien is not exercisable for any debt incurred for the purchase of wines and other spirituous or fermented liquor.

4. (1) Subject to subsection (2) and in addition to any other remedy provided by law, the hotelkeeper has a right of sale by public auction over the goods or personal property detained by the exercise of a right of lien.

(2) The right of sale is not exercisable unless

(a) three months have expired since the exercise of the right of lien,

(b) the debt has not been satisfied, and

(c) the hotelkeeper has, at the end of the three months, posted up on the outer side of the door at the entrance of the hotel for the duration of a week a notice of sale that is in accordance with section 5.

5. A notice of sale under section 4(c) shall specify

(a) the name of the guest,

(b) the amount of the debt outstanding,

(c) the description of the goods or personal property to be sold,

(d) the time and place of sale, and

(e) the name of the auctioneer.

6. (1) The proceeds of a sale under this Act may be applied by the hotelkeeper towards the satisfaction of the debt and the costs of advertisement and sale.

(2) If an application was made to the hotelkeeper before or at the time of the sale, any surplus of the proceeds of the sale shall be paid over to the guest.

(3) If no application was made, the hotelkeeper shall, as soon as possible, deposit the surplus with the Territorial Treasurer.

7. Any sum of money deposited with the Territorial Treasurer under section 6(3) shall be kept for one year and if the sum is not claimed at the end of the year it shall form part of the general revenue fund of the Territories.

8. (1) Subject to subsection (2) the extent of liability of a hotelkeeper for the loss or injury of the goods or personal property of a guest shall not exceed two hundred dollars.

(2) Subsection (1) shall not apply,

(a) to the loss of or injury to any horse or other animal, any gear of such horse or animal or to any carriage;

(b) to goods or personal property lost or injured by reason of the default or neglect of the hotelkeeper or his servants; and

(c) to goods or personal property deposited for safe custody with the hotelkeeper.

9. A hotelkeeper may require as a condition of his liability that goods or personal property to be deposited with him for safe custody shall be placed by the guest in a suitable box or receptacle that is secured and sealed.

10. Every hotelkeeper shall keep a copy of this Act posted at the entrance to his office and in every public room in his hotel in such a place that it could be easily seen and read by a guest.

(2) A hotelkeeper shall not be entitled to any benefit he may have under this Act unless subsection (1) has been complied with.

#### EXERCISE NO. 3

1. This Ordinance may be cited as the "Hotelkeeper's Ordinance".

2. In this Ordinance,

"Hotelkeeper" includes an innkeeper and a boarding or lodging housekeeper.

"Hotel" includes an inn and a boarding or lodging house.

#### PART I

##### *Lien of Hotelkeeper*

3. Any hotelkeeper may detain on his premises the baggage and personal property of any guest who is indebted to him for board and lodging, but not where the debt arose only from the selling of wines or spirituous or fermented liquor to that guest or to any one else by his order.

4. The hotelkeeper shall be responsible for the safe keeping of the baggage and personal property detained pursuant to section 3.

5. In addition to all other remedies, the hotelkeeper may, if the debt remains unpaid for three months, sell by public auction the baggage and personal property so detained.

6. Before the sale, the hotelkeeper shall post and keep posted during one week on the outside of the door of his hotel a notice of the intended sale, stating

- (a) the name of the guest,
- (b) the amount of the indebtedness,
- (c) a description of the baggage or other property to be sold,
- (d) the time and place of sale, and
- (e) the name of the auctioneer.

7. After the sale, the hotelkeeper

- (a) may apply the proceeds in payment of the amount due to him and the costs of the advertising and the sale, and
- (b) shall pay over the surplus, if any,
  - (i) to the person entitled thereto, on application being made by him within one week after the sale, or
  - (ii) where no application is made, to the Territorial Treasurer.

8. The Territorial Treasurer shall keep the amount mentioned in paragraph 7(b) for the person entitled to it for one year; after that time, that amount shall form part of the general revenue fund of the Territories.

## PART II

### *Liability of Hotelkeeper*

9. Subject to the other provisions of this Part, no hotelkeeper shall be liable for any loss or damage to personal property brought to his hotel to a greater amount than \$200.

10. Section 9 does not apply where

- (a) the property is a horse or other live animal or any gear appertaining thereto or any carriage,
- (b) the property has been stolen, lost or damaged through the default or negligence of the hotelkeeper or of one of his employees,
- (c) the property was expressly deposited for safe custody with the hotelkeeper,

(d) the hotelkeeper refuses to receive for safe custody any property of his guest, or

(e) the guest is unable, through any default of the hotelkeeper to deposit any property for safe custody.

11. In the case of an express deposit for safe custody, the hotelkeeper may require, as a condition to his liability, that that property be deposited in a box or other receptacle fastened and sealed by the guest making the deposit.

### PART III

#### *Ordinance to be Posted*

12. This Ordinance does not apply to a hotelkeeper who does not keep conspicuously posted in the office and in each public room of his hotel a readable copy of this Ordinance.

### EXERCISE NO. 4

#### *Definitions*

1. In this Ordinance, "hotel" includes a boarding or lodging house.

### PART I

#### *Seizure and Sale for Debts*

##### *Seizure and Detention*

2. A hotelkeeper may seize any personal property that is located on his premises and belongs to a person who is indebted to him for board and lodging, not including a debt for wines or spirituous or fermented liquors, and shall detain such seized property on his premises.

##### *Sale*

3. Where property is seized for a debt pursuant to section 2 and the debt is not paid within three months from the date of seizure, the hotelkeeper may sell the property by public auction.

4. A hotelkeeper shall, for a period of at least one week before a sale of seized property, post a notice on the outside of the main entrance to his hotel stating

(a) the name of the owner of the property,

(b) the amount of the debt,

- (c) a description of the property to be sold,
- (d) the time and place of the sale, and
- (e) the name of the auctioneer.

5. A hotelkeeper shall deduct from the proceeds of a sale of seized property the amount of the debt for which the property was seized and the costs of advertising and sale and shall pay any remainder to

- (a) the previous owner of the property, where that person has made an application for such remainder; and
- (b) the Territorial Treasurer, where the previous owner has not made an application for the remainder.

6. (1) Where proceeds from a sale of seized property are paid to the Territorial Treasurer, the previous owner of the property shall, for a period of one year from the date of the sale, be entitled to claim the proceeds.

(2) Where proceeds are not claimed pursuant to subsection (1), the proceeds shall form part of the general revenue fund of the Territories.

## PART II

### *Liability of Hotelkeeper*

7. (1) A hotelkeeper who complies with section 8 shall not be liable for loss or injury to goods or property brought to his hotel, not including any live animal or gear appertaining thereto or any carriage, for a greater amount than \$200 unless

- (a) the goods or property are stolen, lost or injured through the default or neglect of the hotelkeeper or any servant in his employ, or
- (b) the goods or property are deposited expressly for safe custody with the hotelkeeper.

(2) Where goods or property are deposited expressly for safe custody with a hotelkeeper, the hotelkeeper may require, as a condition to his liability, that the goods or property be deposited in a box or other receptacle fastened and sealed by the person depositing the same.

(3) If a hotelkeeper refuses to receive any goods or property of his guest for safe custody or if a guest is unable to deposit goods or property for safe custody through any default or neglect of the hotelkeeper, the hotelkeeper shall not be entitled to the benefit of this Ordinance in respect of such goods or property.

8. Every hotelkeeper shall keep a printed or plainly written copy of this Ordinance conspicuously posted in the office and in each public room of his hotel.

## CHAPTER NOTES XII

1. 41-42 Vict. c. 38
2. 26-27 Vict. c. 41
3. S.O. 1874, c. 11
4. [1973] 4 W.W.R. 339
5. [1914] 32 O.L.R. 126
6. At 127
7. Comp. Leg. 82
8. See Comp. Leg. 90
9. Comp. Leg. 81
10. See note (6) above
11. See Const. Stat. 100-102

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