



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

Elmer A. Driedger, Q.C., B.A., LL.B., LL.D.

Professor Emeritus, Faculty of Law, University of Ottawa
Formerly Deputy Minister of Justice
and
Deputy Attorney General of Canada

BOOK FIVE



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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*¹ and is also referred to in the Renton Report on the Preparation of Legislation.²

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 FIVE

CHAPTER XV

DISTRESS ORDINANCE

One of the purposes of this assignment was to give experience in a "lick, spit and polish" exercise. There are times when a draftsman is required to "fix up" a draft prepared by someone else, or to do a polish job on a statute to be re-enacted, all for to-morrow morning. There is no time to go into substance or to do a decent job.

Another purpose was to do a draft that is essentially a gloss on the common law. No one should touch the substance or terminology of a statute of this kind unless he is thoroughly familiar with the common law and other relevant statutes such as a Bill of Sales or Chattel Mortgage Act.

On the whole, students did not know what they were doing. For the most part they churned up the whole substance and changed the terminology.

The original is a good example of common law lawyers' writing. It is loaded with whosoever and whatsoever and there is much repetition in the first three sections. However, as a law, it has been carefully done, and is quite good, although not in modern style. As it stands, lawyers, bailiffs, landlords and tenants would have little difficulty in reading and understanding it.

AN ORDINANCE RESPECTING DISTRESS FOR RENT AND EXTRA-JUDICIAL SEIZURE.

1. No person whosoever 1 making any distress for rent nor any person whosoever employed in any manner in making such distress or doing any act whatsoever in the course of such distress or for carrying the same into effect shall have, take or receive out of the proceeds of the goods and chattels distrained upon and sold or from the tenant distrained on or from the landlord or from any other person whomsoever any other or more costs and charges for and in respect of such distress or any matter or thing done therein than such as are fixed in the schedule to this Ordinance and applicable to each proceeding which shall have been taken in the course of such distress 2 and no person or persons whosoever shall make any charge whatsoever for any act, matter or thing mentioned in this Ordinance or in the said schedule unless such act, matter or thing shall have been really 3 performed or done.

2. No person whosoever making any seizure under the authority of any chattel mortgage bill of sale or any other extra judicial process whatsoever nor any person whosoever employed in any manner in making such seizure or doing any act whatsoever in the

course of such seizure or for carrying the same into effect shall have, take or receive out of the proceeds of the goods and chattels seized and sold from the person against whom the seizure may be directed or from any other person whomsoever any other or more costs and charges for and in respect of such seizure or any matter or thing done therein or thereunder than such as are fixed in the schedule hereto and applicable to each act which shall have been done in course of such seizure and no person or persons whosoever shall make any charge whatsoever for any act or matter or thing mentioned in the said schedule unless such act, matter or thing shall have been really performed and done.

3. If any person making any distress or seizure referred to in sections 1 and 2 of this Ordinance shall take or receive any other or greater costs than are set down in the said schedule or make any charge whatsoever for any act, matter or thing mentioned in the said schedule and not really performed or done the party aggrieved may cause the party making the said distress or seizure to be summoned before the Supreme Court 4 of the judicial district in which the goods and chattels distrained upon or seized or some portion thereof lie and the said court may order the party making the distress or seizure to pay to the party aggrieved treble the amount of moneys taken contrary to the provisions of this Ordinance and the costs of suit.

4. A landlord shall not distrain for rent on the goods and chattels the property of any person except the tenant or person who is liable for the rent although the same are found on the premises 5; but this restriction shall not apply in favour of a person claiming title under or by virtue of an execution against the tenant or in favour of any person whose title is derived by purchase, gift, transfer or assignment from the tenant whether absolute or in trust or by way of mortgage or otherwise nor to the interest of the tenant in any goods on the premises in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon performance of any condition 6 nor where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative of his in case such other relative lives on the premises as a member of the tenant's family 7.

5. The right of a mortgagee of land or his assigns to distrain for interest in arrear or principal due upon a mortgage shall notwithstanding anything stated to the contrary in the mortgage or in any agreement relating to the same 8 be limited to the goods and chattels of the mortgagor or his assigns and as to such goods and

chattels to such only as are not exempt from seizure under execution.

6. Goods distrained for such interest or principal shall not be sold except after such notice as is required to be given by a landlord who sells goods distrained for rent.

SCHEDULE

- | | |
|--|--------|
| 1. Levying distress | \$1.00 |
| 2. Man in possession, per day | 1.50 |
| 3. Appraisement, whether by one appraiser or more, two cents on the dollar on the value of goods up to \$500 and one per cent on the dollar for each additional \$500 or fraction thereof up to \$2,000, and one-half per cent on all sums over that amount. | |
| 4. All reasonable and necessary disbursements for advertising. | |
| 5. Catalogue, sale, commission and delivery of goods, three per cent on the net proceeds of the goods up to \$1,000 and one and one-half per cent thereafter. | |

COMMENTS

1. There are a multitude of whosoever or whatsoever; all meaningless and unnecessary.

2. There is a slight technical difficulty here. Anything done must be clearly identified with the charge set out in the Schedule for that thing. The original comes close, but it can be made more precise.

3. Really means actually.

4. This provision depends on the court procedure of the enacting jurisdiction. What is intended is a summary application rather than a regular action by writ of summons and statement of claim.

5. This is intended to override the common law; it must therefore be written as a notwithstanding clause in common law terminology.

6. There is, in my opinion, a flaw or a looseness of language here. A purchaser under a lien note or conditional sale (hire-purchase) has only a right to possession; the title is reserved to the seller and the purchaser has no property interest in the goods. A landlord may seize and sell, but only the interest or rights of the tenant in the contract.

7. This section is too long to be written in one piece. It should be broken up.

8. This provision is to prevent contracting out.

The first "lick, spit and polish."

AN ORDINANCE RESPECTING DISTRESS FOR RENT AND EXTRA-JUDICIAL SEIZURE.

1. No person making any distress for rent and no person employed in making such distress or doing any act in the course of such distress or for carrying it into effect shall take or receive, out of the proceeds of the goods and chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person any other or greater costs or charges for any matter in respect of such distress than such as are prescribed in the Schedule for such matter 1 and no person shall make any charge for any act unless it was actually 2 done.

2. No person making any seizure under the authority of any chattel mortgage, bill of sale or any other extra-judicial process and no person employed in making such seizure or doing any act in the course of such seizure or for carrying it into effect shall take or receive out of the proceeds of the goods and chattels seized and sold, from the person against whom the seizure may be directed, or from any other person, any other or greater costs or charges for any act done in the course of such seizure than such as are prescribed in the Schedule for such act, and no person shall make any charge for any act unless it was actually done.

3. If any person making any distress or seizure referred to in section 1 or 2 takes or receives any other or greater costs or charges for any matter in respect of such seizure than such as are prescribed in the Schedule for such matter, or makes any charge for any act that was not actually done, the person aggrieved may cause the person making the distress or seizure to be summoned before the Supreme Court of the judicial district in which the goods and chattels distrained upon or seized or some portion thereof are situated, and the court may order the person making the distress or seizure to pay to the person aggrieved treble the amount of money taken or received contrary to the provisions of this Ordinance and the costs of the proceedings.

4. (1) A landlord shall not distrain for rent on the goods and chattels that are the property of a person other than the tenant or the person who is liable for the rent notwithstanding that they are found on the premises.

(2) Subsection (1) does not apply 3

(a) in favour of

- (i) a person claiming title under or by virtue of an execution against the tenant,
- (ii) a person whose title is deprived by purchase, gift, transfer or assignment from the tenant whether absolute or in trust or by way of mortgage or otherwise,
- (b) subject to subsection (3), 4 to property in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon performance of any condition,
- (c) where property has been exchanged between the tenant and another person for the purpose of defeating the claim of or the right of distress by the landlord, or
- (d) where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or by any other relative of his if such other relative lives on the premises as a member of the tenant's family.
- (3) Where property is in the possession of a tenant as described in paragraph (1)(b), only the rights of the tenant under the contract may be sold. 5

5. (1) The right of a mortgagee of land or his assigns to distrain for interest in arrear or principal due upon a mortgage is, notwithstanding anything to the contrary in the mortgage or in any agreement relating thereto, limited to such goods and chattels of the mortgagor or his assigns as are not exempt from seizure under execution.

(2) Goods distrained for interest or principal referred to in subsection (1) shall not be sold except after such notice as is required to be given by a landlord who sells goods distrained for rent has been given.

COMMENTS

1. A particular thing done must be identified with the charge for that thing set out in the schedule. The original comes close, but there can be a more precise identification.
2. Actually instead of really. This is just a matter of personal taste.
3. The long section 4 of the original is broken up and paragraphed.
4. 5. This comes closer to what I think it should be.

The second "revision"

1. No person who makes

(a) a distress for rent, or

(b) a seizure under the authority of a chattel mortgage, bill of sale or any other extra-judicial process 1

and no person employed in making such distress or seizure or doing any act in the course thereof or for carrying it into effect, shall take or receive, out of the proceeds of the sale of the goods and chattels distrained upon or seized, or from the tenant distrained on, or from the landlord, or from any other person, any costs or charges for any matter in respect of such distress or seizure other or greater than those prescribed in the Schedule for such matter, and no person shall make any charge for any matter unless it was actually done.

2. If any person who makes a distress or seizure referred to in section 1 takes or receives any costs or charges for any matter in respect of such distress or seizure other or greater than those prescribed in the Schedule for such matter, or makes any charge for any matter that was not actually done, the person aggrieved may cause the person making the distress or seizure to be summoned before the Supreme Court of the judicial district in which the goods and chattels distrained upon or seized or some portion thereof are situated, and the Court may order the person making the distress or seizure to pay to the person aggrieved treble the amount of money taken or received contrary to the provisions of this Ordinance and the costs of the proceedings.

(*Alternative: If any person takes or receives money contrary to the provisions of section 1, the person aggrieved etc.*) 2

3. (1) A landlord shall not distrain for rent on the goods and chattels that are the property of a person other than the tenant or the person who is liable for the rent notwithstanding that they are found on the premises.

(2) Subsection (1) does not apply

(a) in favour of

(i) a person claiming title under or by virtue of an execution against the tenant,

(ii) a person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust or by way of mortgage or otherwise,

(b) subject to subsection (3), to property in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon performance of any condition,

(c) to property that has been exchanged between the tenant and another person for the purpose of defeating the claim of or the right of distress by the landlord, or

(d) to property that is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or by any other relative of his if such other relative lives on the premises as a member of the tenant's family.

(3) Where property is in the possession of a tenant as described in paragraph (2)(b), only the rights of the tenant under the contract may be sold.

4. (1) The right of a mortgagee of land or his assigns to distrain for interest in arrear or principal due upon a mortgage is, notwithstanding anything to the contrary in the mortgage or in any agreement relating thereto, limited to such goods and chattels of the mortgagor or his assigns as are not exempt from seizure under execution.

(2) Goods distrained for interest or principal referred to in subsection (1) shall not be sold except after such notice as is required to be given by a landlord who sells goods distrained for rent has been given.

COMMENTS

1. Sections 1 and 2 of the original are here combined in order to remove repetition.

2. This alternative would remove more repetition.

RETURN NO. 1

1. (1) A person who 1

(a) distrains for rent,

(b) seizes goods under any extra judicial authority 2, or

(c) is employed in connection 3 with anything done under 4 paragraph (a) or (b),

is not entitled, out of the proceeds of the sale of goods seized 5, to payment in excess of the amounts set out in the Schedule 6; and no person shall claim payment in respect of an item mentioned in the Schedule until he has completed the transaction. 7

(2) A person who deducts or receives payment in contravention of this section is liable to repay three times the amount by which the section has been contravened. 8

2. (1) A landlord shall not distrain for rent on goods of a person other than a tenant indebted 9 to him though such goods are found on the premises in respect of which the rent is owed.

(2) Subsection (1) does not protect 10

(a) the interest of a person claiming title to the goods by virtue of a writ of execution;

(b) the interest of a person who derives title to the goods from the tenant since the rent became due and owing **11**; or

(c) the interest of a tenant in goods in his possession and **12** of which he is to become owner on performance of a condition in a contract;

and does not operate **13**

(d) in favour of a person who exchanges or borrows goods to defeat distress by the landlord; or

(e) in favour of the family of the tenant, his son-in-law, daughter-in-law or any relative, who lives as a member of his household.

3. The right of distress by a mortgagee of land and his assigns is, notwithstanding anything to the contrary in the mortgage deed or mortgage agreement **14**, limited to the goods of the mortgagor and his assigns and to those goods **15** that are not exempt from seizure. **16**

4. A person who distrains on goods under this Ordinance **17** may only **18** sell them after he has given due notice as required by the law relating to sale on distress.

COMMENTS

1. Sections 1 and 2 of the original are here combined.

2. It is not under extra judicial authority; it is extra judicial seizure under the authority of a statute or a contract. The two words are usually hyphenated as *extra-judicial*.

3. *in connection with* is vague.

4. Distress or seizure is not under the authority of this section.

5. The *goods seized* appear to relate only to paragraph (b) and not to (a).

6. The precise connection between a thing done and the charge for that thing in the schedule is missing.

7. The purpose is to prohibit charging for something that was not done.

8. This provision as written would in most jurisdictions require an ordinary action rather than a summary application.

9. Would a subtenant be indebted to the landlord?

10. The word *protect* is hardly appropriate. The original is better; it imposes a restriction on the common law right of distress and then removes that restriction with respect to certain classes of goods or persons.

11. This time restriction should not be there.

12. The *and* should not be there.

13. I am generally not in favour of going back to the outer margin and then continuing the paragraphing.

In the original the first two items are persons and the rest property. It might be better to make them all property. Thus, the first item in paragraph (a) could be *property title to which is claimed* and the second item in paragraph (b) *property title to which it (was) derived*.

14. There should also be mentioned any other agreement.

15. There are not two classes of goods. The words *and to those goods* should be deleted.

16. Seizure under execution. This is a reference to an Executions Act where certain goods are declared exempt.

17. The distress is under the lease, etc. and not under this Ordinance. It is not the Ordinance that authorizes distress.

18. Only *after* rather than only *sell*.

RETURN NO. 2

1. (1) No person shall retain from the proceeds of the sale of personal property distrained for the non-payment of a rent due, or seized for the non-payment of a debt due, any amount of money

(a) that is in excess of the amount fixed for each act of distress or seizure enumerated in the schedule to this Ordinance, or

(b) that is for an act of distress or seizure enumerated in the schedule to this Ordinance not performed. 1

(2) Every person who violates the provisions in 2 subsection (1) is, on the information of the person from whom the personal property was distrained or seized 3, liable to be summoned 4 before the Supreme Court of the judicial district where any portion of the personal property distrained or seized is located.

(3) The Supreme Court may order the person so 5 summoned to pay

(a) three times the amount of money retained in violation of the provisions in subsection (1) to the informant, and

(b) the costs of the action

upon proof of the violation. 6

2. (1) Except as provided in subsection (2), no landlord shall, for the non-payment of a rent due from his tenant, distrain the personal property found on his premises of any person not his tenant. 7

(2) A landlord may, for the non-payment of a rent due from his tenant, distrain the personal property found on his premises of any person not his tenant

(a) where the person claims title to the property by virtue only of

(i) an execution against the tenant, or

(ii) a transfer of ownership from the tenant by any method, 8

(b) where the person claiming title to the property has loaned or leased that property to the tenant for the purpose of defeating the right of distress of the landlord, 9 or

(c) where the person claiming title to the property is the spouse, child, in-law or other relative of the tenant and is residing on the premises as a member of the tenants family. 10

3. (1) No mortgagee of land 11 shall, for the non-payment of principal or interest due from his mortgagor, distrain

(a) the personal property of any person other than the mortgagor notwithstanding anything stated to the contrary in the mortgage or a related agreement, or

(b) the personal property of the mortgagor that is exempt from seizure under execution. 12

(2) No sale of personal property distrained for the non-payment of principal or interest due is valid unless the mortgagee has given notice to the mortgagor in the manner required of a landlord in the *Landlord and Tenant Act* respecting the sale of personal property distrained for non-payment of a rent due from his tenant.

COMMENTS

1. This draft is too venturesome and is too far removed from the language of the common law. It also misses the main point of the original; this draft would not prevent a person charging for items not mentioned in the Schedule. The draft does not mention *anything done in the course of* a distress or seizure. It does not mention extra-judicial seizure, and as written would include seizure under execution. The Schedule does not enumerate *acts of seizure or distress*. It is not correct to speak of a rent due.

2. *the provisions in* should be deleted.
3. *Person aggrieved* as in the original would be better.
4. The active as in the original would be better.
5. The *so* is not quite accurate. Subsection (2) says *liable to be summoned* and not *may be summoned*.
6. There would be no order unless violation was proven.
7. The original is better since it is in the language of the common law.
8. There might not be a transfer of ownership in the case of a mortgage.
9. It is the exchange of property rather than the mere loan or lease that is aimed at.
10. Under the original the daughter-in-law, son-in-law need not reside on the premises. *In-law* should be preceded by daughter, son, etc.
11. Or his assigns.
12. See comment 15 under Return No. 1.

RETURN NO. 3

1. This Ordinance may be cited as the Distress and Seizure Ordinance.

2. The costs chargeable in respect of proceedings taken in the course of distress for rent or extra-judicial seizure under a chattel mortgage, bill of sale or other instrument shall be as specified in the Schedule. 1

3. (1) Every person who takes or retains an amount in respect of any proceeding which exceeds the costs specified by this Ordinance 2 is liable for damages of three times the excess. 3

(2) Every person who takes or retains costs in respect of a proceeding not actually taken by him is liable for damages of three times the amount so taken or retained.

4. No landlord may distrain for rent upon the goods of any person other than his tenant 4 unless

- (a) the goods were previously 5 the property of the tenant,
- (b) the goods are the property of the tenant's spouse, son, daughter, son-in-law, daughter-in-law, or any relative residing with him in the premises subject to the distress 6,
- (c) the goods are held by the tenant under a contract for purchase, 7 or

(d) the goods were borrowed or hired by the tenant for the purpose of defeating the claim of the landlord. 8

5. No mortgagee may distrain for interest or principal 9 upon

(a) the goods of any person other than his mortgagor or his assigns, or

(b) any goods of the mortgagor which would be exempt from seizure under execution. 10

6: No goods distrained under a mortgage may be sold until the mortgagee has given notice in the manner and form required of a landlord who sells goods distrained for rent.

COMMENTS

1. If the costs *shall be* as specified in the Schedule, could they be less?

2. The insertion of *for that proceeding* would make the proper connection.

3. These are not damages. Moreover, as written, an ordinary law suit would need to be instituted to recover.

4. As indicated, the common law language should be used to modify the common law, as in the original.

5. Previously to what?

6. The premises are not subject to distress. The structure of this whole section is not correct. As in the original, there should first be a restriction on the common law, followed by an enumeration of persons (or property) excluded from the restriction.

7. See earlier comments.

8. The exchange is a trick used by the tenant and another; it should be mentioned.

9. This section should be written to prevent contracting out, rather than a prohibition. There is nothing to say what happens if a mortgagee violates the prohibition.

10. See previous comments. Paragraph (b) should be written as a description of the goods mentioned in paragraph (a) rather than as additional goods.

RETURN NO. 4

1. "court" means the Supreme Court of the Judicial District

(a) in which the distress or seizure took place, or

(b) in which all or part of the goods distrained or seized are situated. 1

2. (1) No person shall claim or receive payment for anything done in connection with any distress or seizure of goods unless the services were actually performed and unless they were authorized by Schedule "A". 2

(2) The court may order a person who has contravened this section to pay over treble the amount of unperformed claim 3 or unauthorized payment to the person distrained or seized against. 4

3. A landlord shall not distrain or seize goods for arrears of rent unless

(a) they are owned by either a tenant or a member of his family living in the rented premises

(b) the owner derives his title from such a person, or

(c) the owner claims title by virtue of an execution against such a person. 5

4. A mortgagor shall not sell goods distrained or seized under the terms of a mortgage unless he complies with the notice provisions that would have to be complied with before a landlord could sell goods distrained or seized for rent arrears. 6

COMMENTS

1. Since *court* is used only once there does not need to be a definition.

2. The distress and seizure should be identified as distress for rent and extra-judicial seizure. As written it includes distress under a mortgage and seizure under execution. The Schedule does not *authorize* things to be done. The things mentioned in the Schedule can hardly be called *services*.

3. What is an *unperformed* claim?

4. The person *distrained or seized against* is not a very good description of the tenant or the person subjected to extra-judicial seizure.

5. See comment 6 under Return No. 3.

6. Section 5 of the original has been omitted.

RETURN NO. 5

1. (1) In this section tenant shall include any person liable for the rent. 1

(2) A landlord shall not distrain for rent on goods and chattels that are the property of a person other than a tenant, notwithstand-

ing that the goods and chattels are found on the premises leased to the tenant. 2

(3) Subsection 1(2) does not apply

(a) in favour of

(1) a person claiming title by virtue of an execution against the tenant, or 3

(2) a person whose title is derived by purchase, gift, transfer or assignment from the tenant whether it is absolute, in trust, by mortgage or otherwise.

(b) subject to subsection 1(4), to goods and chattels on the premises and

(1) in the possession of the tenant under a contract for purchase or

(2) to which the tenant may become owner upon performance of a condition,

(c) where goods have been exchanged between the tenant and someone else by one borrowing or hiring from the other for the purpose of defeating the claim of distress by the landlord, 4

(d) where the property is claimed by the wife, husband, son, daughter, son-in-law, daughter-in-law of the tenant or by any tenant's relative who is living on the premises as a member of the tenant's family. 5

(4) Subsection 3(2) applies to goods and chattels described in subsection 3(2)(b) only to the extent of the interest of the tenant in those goods and chattels. 6

2. (1) The right of a mortgagee of land or his assigns to distrain for interest in arrears or principal due upon a mortgage, notwithstanding anything to the contrary in the mortgage or any agreement relating to it, is limited to only 7 those goods of the mortgagor or his assigns that are not exempt from seizure under execution.

(2) Goods distrained for interest or principal referred to in subsection 2(1) shall not be sold until after notice has been properly 8 given by a landlord who sells goods distrained for rent.

3. (1) Costs or charges, by a person who makes

(a) a distress for rent or

(b) a seizure under an extra-judicial process

or by a person employed or doing an act in the course thereof, with respect to the distress or seizure shall not be greater than those prescribed for the particular matter in the Schedule. 9

(2) There shall be no charge for any matter under this Ordinance unless that matter has been completed. 10

(3) Subject to subsection 3(2), nothing in this section prevents a person charging a reasonable amount for acts or matters with respect to the distress or seizure that are not covered in the Schedule. 11

4. (1) Any person who paid greater charges 12 for a distress or seizure than as limited by section 3, may cause the party charging the greater amount to be summoned before the Supreme Court of the judicial district in which the goods or chattels distrained on or seized are located.

(2) The court may order the party summoned under subsection 4(1) to pay the person aggrieved the costs of the suit and three times the amount of money charged or taken contrary to section 3.

COMMENTS

1. There is enough common law to say who a tenant is.

2. The Act or Ordinance should begin with the most important provisions, as in the original. Subsections (2) and (3) of this section come from section 4 of the original, and are here correctly structured.

3. The subparagraphs should be (i) and (ii) rather than (1) and (2).

4. It is the property rather than a case that should be removed from the restriction.

5. See comment 4.

6. A very good attempt. But how can a landlord seize one-half of a television set?

7. The *only* is not needed.

8. The same notice as is required to be given by a landlord.

9. Again, this is close. The proper connection could be provided if *for any matter* appeared somewhere in the beginning.

10. The purpose of this provision is to prevent a charge for something that was not done, rather than for something that was partially done but not completed.

11. This is the student's own idea. It is contrary to the purpose of the Ordinance.

12. If a landlord deducts a greater fee than that set out in the schedule it can hardly be said that the tenant *paid a greater charge*.

RETURN NO. 6

1. This Ordinance may be cited as the Distress and Seizure Ordinance.

DISTRESS FOR RENT

2. Every person who distrains or assists in distraining for rent personal property shall not receive 1, either from anyone or out of any proceeds realized on a sale of the property, an amount of money for his services greater than the appropriate 2 amounts set out in the Schedule annexed to this Ordinance.

3. The right of a landlord to distrain for rent is limited to property in which title is claimed 3

(a) by a person who is

(i) his tenant or other person liable for his rent,

(ii) the spouse, child, daughter-in-law, or son-in-law of the tenant, or

(iii) a relative of the tenant who lives on his premises as a member of his family, or

(b) by a person under

(i) an execution levied against the tenant,

(ii) a purchase, gift, assignment, or transfer from the tenant whether it is absolute, conditional, in trust, or by mortgage or otherwise, or

(iii) a borrowing or hiring of the property by him for the purpose of defeating the right of distress of the landlord.

Mortgages

4. Every person who seizes or assists in seizing property under the authority of a chattel mortgage, bill of sale, or any other extra-judicial process shall not receive, either from anyone or out of any proceeds realized on a sale of the property seized, an amount of money for his services greater than the appropriate amounts set out in the Schedule annexed to this Ordinance. 4

5. (1) The right of a mortgagee of land or his assigns to distrain property for principal or interest due upon his mortgage is, notwithstanding the mortgage or any agreement relating thereto, limited to the personal property of the mortgagor or his assigns, as the case may be 5, not exempt from seizure under execution.

(2) Property distrained by a mortgagee or his assigns for principal or interest due is not to be sold except after giving notice in the same manner required of a landlord who sells property distrained for rent.

Penalties

6. Every person who violates sections 2 or 4 is liable

(a) to be summoned, by the party aggrieved by the distress or seizure 6, before the superior court of the district where any part of the property is located, and

(b) to pay to the aggrieved party, upon an order which the court may make, his costs of the law suit plus triple the amount of money received in violation of the sections. 7

COMMENTS

1. *Every person shall not receive* can be read as meaning *not every person shall receive*, which implies that some may.¹

2. A good attempt, but it could be sharper.

3. This whole section is incorrectly structured. See previous comments.

4. Repetition could be avoided by combining this section with section 2.

5. *as the case may be* is not needed.

6. It is the person (not the party) who is *aggrieved* by the excess charge.

7. These two provisions, paragraphs (a) and (b), are not suitable for paragraphing under common umbrella words. Paragraph (a) gives a right to a person and paragraph (b) confers a power on the court. Paragraph (b) should be in the active - *the court may order*.

RETURN NO. 7

1. This Ordinance may be cited as the *Extrajudicial Seizure Ordinance*. 1

2. (1) A person who, on his own behalf or on behalf of another, has seized the property of any person in payment of rent due 2, or under the authority of a chattel mortgage bill of sale or any other extra judicial process, is only 3 entitled to be paid 4 out of the proceeds of the sale of the property seized, or by the person whose property was seized, or by any other person, the costs actually incurred by him in respect of the seizure, that are set out in the schedule annexed to this Ordinance, to the extent mentioned therein. 5

(2) Where a person mentioned in subsection (1) who has seized property on his own behalf 6 has been paid out of the proceeds of the sale of the property of any person, or by any person (in this subsection, called the party aggrieved 7) any costs other than these described 8 in subsection (1), the party aggrieved may summon him before the Supreme Court of the judicial district in which all or some of the property seized is situated, and the court may order him to pay to the party aggrieved three times the amount of the costs not described in subsection (1) and the costs of suit.

3. A landlord may not seize property found on premises for which rent is due, that belongs to a person who is not liable for the rent, unless that person 9

(a) claims title to the property in virtue of an execution against the tenant,

(b) claims title to the property in virtue of

(i) a purchase, gift, transfer or assignment from the tenant, whether absolute, in trust, by way of mortgage or otherwise,

(ii) a conditional sales contract, or

(iii) an agreement whereby two people exchange the ownership of their property and rent the property to each other

made for the purpose of defeating the claim or right of seizure of the landlord,

(c) is the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or

(d) is any other relative of the tenant who lives on the premises as a member of the tenant's family.

4. (1) A mortgagee of land may, notwithstanding the deed of mortgage or any agreement relating thereto, only 10 seize in payment of interest in arrears or principal due under the mortgage, property that belongs to the mortgagor not being exempt from seizure under execution.

(2) Property seized in payment of interest in arrears or principal due under a mortgage may only 11 be sold upon giving a notice similar to that required to be given by a landlord who sells property seized in payment of rent due.

COMMENTS

1. This title would do, but since the Ordinance would apply mainly to distress, that word ought to be in the title.

2. The language of the common law would be better.

3. The *only* is misplaced. If used, it should come before *the costs*.
4. Retain out of the proceeds or be paid by someone.
5. There are two separate ideas here, and they should be written as co-ordinate clauses - *no greater charges, and no charges for anything not done*.
6. The words *on his own behalf* are inconsistent with the intent of this provision. An auctioneer who takes out of the proceeds or sale more than he should is not one who seized property on his own behalf.
7. Three different persons are mentioned. Who is it who is to be known as the *party aggrieved*?
8. No costs are described in subsection (1). It is *other* or *greater* costs.
9. See comments 4 and 6 under Return No. 3.
10. The *only* is misplaced. It should modify *property* rather than *seize*.
11. Again, a misplaced *only*.

RETURN NO. 8

1. This Ordinance may be cited as the Distress Ordinance.
2. (1) No person making any distress for rent or doing any act in the course of any distress, shall take or receive out of the proceeds of the goods and chattels distrained upon and sold or from the tenant distrained on or from the landlord or from any other person, any charges 1 for any distress or for any act done under any distress other 2 than as are fixed in the schedule to this Ordinance.
- (2) No person shall make any charge for any act mentioned in this Ordinance 3 unless the act was performed.
3. (1) No person making any seizure under the authority of a chattel mortgage, bill of sale or any other extrajudicial process or doing any act in the course of any seizure, shall take or receive out of the proceeds of the goods and chattels seized and sold or from the person against whom the seizure is directed or from any person, any charges for any seizure or for any act done thereunder other than as are fixed in the schedule hereto. 4
- (2) No person shall make any charge for any act mentioned in the schedule unless the act was performed.
4. If any person making 5 any distress or seizure, takes or receives any charges other than as are mentioned in the schedule 6 or makes any charge for any act that is not performed, the party aggrieved may cause such person to be summoned before the Supreme Court of the judicial district in which the goods and chattels or some portion thereof are and the Court may order the

person making the distress or seizure to pay to the party aggrieved treble the amount of money taken contrary to the provisions of this Ordinance.

5. (1) A landlord shall not distrain for rent on goods and chattels found on the premises of the tenant, the property of any person other than the tenant or the person who is liable for the rent. 7

(2) Subsection (1) does not apply where 8

(a) any person claims title under or by virtue of an execution against the tenant,

(b) any person derives 9 title to the goods and chattels by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust or by way of mortgage or otherwise,

(c) any goods are on the premises 10 in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon the performance of any condition,

(d) any goods 11 have been exchanged between two tenants or persons by borrowing or hiring for the purpose of defeating the claim of or the right of distress by the landlord, or

(e) the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant or by any other relative living on the premises as a member of the family of the tenant.

6. (1) The right of a mortgagee of land or his assigns to distrain for interest in arrear or the principal due upon a mortgage, is, notwithstanding anything stated to the contrary in the mortgage or in any agreement relating thereto, limited to the goods and chattels of the mortgagor or his assigns.

(2) Subsection (1) does not apply to goods and chattels exempt from seizure under execution. 12

7. No person shall sell any goods distrained for interest or principal until 13 notice as is required to be given by a landlord who sells goods distrained for rent, is given. 14

COMMENTS

This draft adheres closely to the original, and is therefore much better than those where students tried to re-write the whole exercise. Some improvements in language have been made or attempted, and long provisions have been broken up.

1. If *for any matter* were inserted here, a clear connection could then be made by referring to *charged for that matter*.

2. *Other* or *greater* than those prescribed in the Schedule.
3. This is too vague a reference; *any act* would be enough.
4. The same changes here as suggested for subsection (1) would give a better connection between any matter and the charges prescribed in the Schedule for that matter.
5. I would prefer *who makes* to *making*.
6. See comments 1 to 4 above.
7. As indicated this should be in the form of a modification of the common law rather than a prohibition.
8. The exception to the modification should be with respect to goods or persons rather than in the form of a case.
9. I would prefer *person who derived*.
10. This illustrates a reason for comment 8. If, for example, there is one piece of furniture in the possession of the tenant under a conditional sale contract, then the stated case has been met and therefore the restriction in subsection (1) is removed.
11. Here again, if television sets have been exchanged the prescribed case has been met and subsection (1) therefore no longer applies.
12. This should be incorporated in the description of the goods. The right of a mortgage is limited to those goods that are not exempt from seizure under execution.
13. The word *such* should be inserted before *notice* - *such notice as is required*.
14. I would prefer *has been given*, since the notice must precede the sale.

EXERCISES

The following returns may serve as exercises.

EXERCISE NO. 1

1. No person who makes or who causes to be made a distress for rent or a seizure under the authority of a chattel mortgage or a bill of sale or by extra-judicial process shall take or receive any costs or charges in respect of the distress or seizure or any action taken in the course of making the distress or seizure other than the costs or charges fixed in the Schedule to this Ordinance in respect of the matters therein set out.

2. No person shall take or receive any costs or charges in respect of any distress for rent or any seizure under the authority of a chattel mortgage or a bill of sale or by extra-judicial process or any action taken in the course of making the distress or seizure unless such distress, seizure or action has been performed.

3. Where a person takes or receives any costs or charges contrary to section 1 or 2, any person aggrieved thereby may apply to a judge of the Supreme Court for an order requiring the person who took or received the costs or charges to pay to the applicant an amount equal to three times the amount of the costs or charges so taken or received.

4. (1) Subject to subsection (2), no landlord shall distrain for rent on any chattels other than the chattels of the tenant or person liable for the rent.

(2) A landlord may distrain for rent on any chattels that

(a) are claimed by any person under an execution against the tenant or person liable for the rent;

(b) are purchased or received by any person whether absolutely or in trust or by way of mortgage or otherwise from the tenant or person liable for the rent;

(c) are transferred by any person to the tenant or person liable for the rent under a conditional sales agreement or other agreement whereby the tenant or person may become the owner of the chattels upon the performance of any condition;

(d) are borrowed or hired by any person from the tenant or person liable for the rent in order to defeat the claim of the landlord; or

(e) are claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or person liable for the rent or by any other relative of the tenant or person liable for the rent who lives with the tenant or person.

5. (1) The right of a mortgagee of land or his assigns to distrain for principal or interest in arrears upon a mortgage is, notwithstanding anything to the contrary in the mortgage or in any agreement relating thereto, limited to the such chattels of the mortgagor or his assigns as are not exempt from seizure under execution.

(2) Chattels of a mortgagor or his assigns distrained for principal or interest in arrears upon a mortgage shall not be sold until such notice as is required to be given by a landlord who sells chattels distrained for rent has been given.

EXERCISE NO. 2

1. (1) Where a chattel is seized and sold in distress of rent or pursuant to a private agreement providing for extra-judicial seizure or pursuant to a statute providing for extra-judicial seizure, no funds shall be disbursed from the proceeds of the sale other than

- (a) the debt for which the chattel was seized and sold, and
- (b) costs set out in the schedule that have actually been incurred.

(2) A person who disburses or takes funds not permitted by subsection (1) shall pay three times the amount of such funds to the person who owned the chattel before it was seized and sold.

(3) A debt owing under subsection (2) may be recovered in an action before the Supreme Court for the judicial district in which the chattel was seized.

2. (1) No person shall seize a chattel in distress for rent unless the chattel belongs to the person liable for the rent.

(2) Notwithstanding subsection (1) the following chattels may be seized in distress for rent if they are found on the premises in respect of which the rent is owing:

- (a) a chattel that is held by the person liable for the rent (hereafter referred to as the "tenant") and is subject to the claim of an execution creditor;
- (b) a chattel the legal or equitable title of which has passed from the tenant to a third person;
- (c) a chattel held by the tenant under an agreement of purchase and sale or a conditional sale agreement, to the extent of the interest of the tenant;
- (d) a chattel lent or rented to the tenant in order to defeat the right of distress;
- (e) a chattel belonging to the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant;
- (f) a chattel belonging to a relative of the tenant where the relative lives in the premises as a member of the family of the tenant.

3. (1) Notwithstanding an agreement to the contrary no chattel shall be seized for arrears under a mortgage unless

- (a) the chattel belongs to the mortgagor or his assigns, and
- (b) the chattel is not exempt from seizure under execution.

(2) Chattels seized for arrears under a mortgage shall not be sold until after the mortgagee gives the same notice as is required to be given by a landlord before he may sell a chattel seized in distress for rent.

EXERCISE NO. 3

1. No person

(a) distraining for rent,

(b) seizing under the authority of a chattel mortgage, bill of sale or other extrajudicial process, or

(c) involved in any manner in the process of distress and sale for rent or seizure and sale under the authority of a chattel mortgage, bill of sale or other extrajudicial process,

shall take or receive from anyone or take or receive out of the proceeds of the sale of chattels distrained or seized any costs or charges other than costs or charges for acts or services set out in the schedule and actually performed or in excess of the amounts for acts or services as set out in the schedule.

2. If any person takes or receives any costs or charges contrary to section 1, a Judge of the Supreme Court of a judicial district in which some part of the chattels distrained on or seized are situate may, at the suit of the party aggrieved, order that person to pay to the party aggrieved triple the amount of the costs or charges taken or received contrary to section 1 together with the costs of the suit.

3. (1) A landlord shall not distrain for rent on the chattels of any person other than the tenant or person liable for the rent.

(2) Subsection (1) does not apply

(a) to chattels, the property of a person

(i) who claims title through execution against the tenant, or

(ii) whose title is derived in any manner from the tenant,

(b) to the interest of the tenant in chattels in his possession under a contract

(i) of purchase, or

(ii) by which he will or may become the owner of the chattels upon performing any condition,

(c) where chattels have been exchanged between the tenant and another person by each borrowing or hiring from the other for the purpose of defeating a right of distress, or

(d) where the chattel is owned by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or any relative of the tenant living as a member of the tenant's family.

4. (1) Notwithstanding anything contained in a mortgage or agreement relating to a mortgage, a mortgagee of land shall not distrain for principal or interest

(a) on the chattels of any person other than the mortgagor, or

(b) on any chattels that are exempt from seizure under execution.

(2) A mortgagee of land shall not sell chattels on which he has distrained for principal or interest unless he gives notice of the sale in the same manner as would be required to be given by a landlord selling chattels distrained on for rent.

EXERCISE NO. 4

1. A chattel is exempt from distress for interest or principle under a mortgage of land where it is

(a) not owned by the mortgagor or his assigns, or

(b) exempt from seizure on execution.

2. (1) A chattel is exempt from distress for rent where it is not owned by a person who is indebted for rent in respect of the place in which it is located.

(2) Subsection (1) does not apply where

(a) the title to the chattel is claimed by virtue of a purchase, gift, transfer or assignment from the tenant, or under an execution against him,

(b) the tenant may become the owner of the chattel upon performance of a condition under a contract,

(c) the chattel is in the possession of the tenant under an agreement with another tenant to defeat the right of the tenant's landlord to levy distress, or

(d) the title of the chattel is claimed by a relative of the tenant who lives with him as a member of his family, or by his wife, husband, daughter, son, daughter-in-law or son-in-law.

3. The charges that may be made for distraining a chattel or making a seizure under an extra-judicial process are limited to those set out in the schedule.

4. Treble the amount collected, by a person in respect of a distress or seizure under an extra-judicial process, that is

(a) for anything that has not been done, or

(b) in excess of or in addition to the charges set out in the schedule,

may be ordered by the Supreme Court of the judicial district having jurisdiction, to be paid by him to the person aggrieved.

5. Notice of the sale of a chattel distrained for interest or principle under a mortgage of land shall be given in a fashion similar as far as possible to that in which notice of the sale of a chattel distrained for rent is required to be given.

CHAPTER NOTES XV

1. Comp. Leg. 11.

CHAPTER XVI

DOGS

Not only is a dog man's best friend, but also a good teacher. This work has three assignments involving dogs.

AN ORDINANCE RESPECTING DOGS

Short Title

1. This Ordinance may be cited as the "Dog Ordinance".

Interpretation

2. In this Ordinance, unless the context otherwise requires, 1

(a) "Dog" shall include both male and female. 2

(b) "Owner" shall mean any person or persons owning or being in the possession, for the time being, of one or more dogs, or having the control or custody of such dog or dogs. 3

(c) "Officer" shall mean any person appointed by the Commissioner to carry out the provisions of this Ordinance, or any regulations made thereunder. 4

(d) "Muzzled" means covered by a muzzle over the mouth in such manner as to make it impossible for the dog so secured to touch with the mouth or bite anything outside the muzzle. 5

Officers

3. The Commissioner may appoint any or all members of the Royal Canadian Mounted Police, and any other person or persons he deems suitable, to be "officers" within the meaning of this Ordinance. 6

General Provisions

4. No dog shall be permitted to remain unfed or unwatered sufficiently long to amount to cruelty or to cause such dog to become a nuisance. 7

5. No dog shall be punished or abused in a manner or to an extent that is cruel or unnecessary. 8

6. No dog shall be permitted to run at large in the North-west Territories within any area defined by the Commissioner, unless muzzled. 9

Penalties

7. Any dog kept **10** contrary to the provisions of sections 4, 5 or 6 of this Ordinance, may be taken in charge by an officer and kept for a period of 5 days unless sooner claimed by the owner. The owner, however, shall not be entitled to recover possession of such dog until payment has been made to the officer of all expenses incurred in securing, caring for and feeding the dog. **11**

8. If possession of the dog is not had **12** as provided in the preceding section **13**, the dog may be sold at public auction by the officer after 24 hours' public notice and the sum realized from any such sale shall be appropriated:

(1) To the payment to the officer of all expenses incurred in securing, caring for and feeding such dog.

(2) The balance, if any, shall be paid to such owner on demand.

(3) If there is no bid for any dog offered for sale at public auction, under this Ordinance the officer may destroy or dispose of such dog in such a manner as he sees fit at any time after such auction, and no damages or compensation may be recovered on account of such disposal or destruction. **14**

9. Violation of any of the provisions of sections 4, 5 and 6 of this Ordinance shall be an offence for which the owner **15** violating shall be liable upon summary conviction to a fine of not more than \$25 and costs, or a term of imprisonment not to exceed 30 days.

Regulations

10. The Commissioner may from time to time make such rules and regulations, not inconsistent with the provisions of this Ordinance, for the carrying out of the true intent and meaning thereof as are found necessary or deemed expedient by him, and may amend or alter such rules and regulations, or any one of them from time to time as is found necessary or deemed expedient. **16**

COMMENTS

This Ordinance was obviously written by an amateur, possibly even by a non-lawyer.

1. Modern Interpretation Acts make *unless the context otherwise requires* unnecessary.

2. The word *dog* by itself would include both sexes.

3. The plural does not need to be mentioned.

4. Section 3 makes this definition unnecessary.

5. As a general rule it is more convenient to define the verb. But surely *muzzle* or *muzzled* can stand on its own without a definition.

6. The Commissioner would not appoint a person unless he considered him suitable.

7. No person is mentioned. The verb should be active.

8. Again, the active should be used.

9. No person shall permit an unmuzzled dog to run at large.

10. *Keeping* is not mentioned in section 4, 5 or 6.

11. It is not normal practice to add a separate sentence in a section.¹ The first sentence could be continued with *but he is not entitled to recover possession*.

12. *Recovered* would be a better connection than *had*.

13. In section 7.

14. Paragraphs are designated by letters. But (2) and (3) do not fit the opening words; (2) should be joined to (1), and (3) should be a separate subsection.

15. The violator might not be the owner.

16. Interpretation Acts make *from time to time* unnecessary. Rules need not be mentioned in addition to regulations. Inconsistent regulations cannot be made. There is no intent other than a *true* intent. If the *rules and regulations* were not *found necessary* or *deemed expedient* they would not be made. Interpretation Acts confer power to *amend or alter*.

Some years later this Ordinance was re-enacted, with some additional provisions. This new Ordinance, set out below, is much better, and there are some new or modified provisions. I distributed this with the original assignment so as to give students some assistance in revising the original.

AN ORDINANCE RESPECTING DOGS

Short Title

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

Interpretation

2. In this Ordinance

- (a) "dog" includes male or female dogs and an animal that is a cross between a dog and a wolf;
- (b) "muzzle" means to secure a dog's mouth in such a fashion that it cannot bite anything;

(c) "officer" means a person appointed by the Commissioner to carry out the provisions of this Ordinance;

(d) "owner" means a person who owns, harbours, possesses or has control or custody of a dog; and

(e) "run at large" means to run off the premises of the owner either when the dog is not muzzled or when the dog is not under the control of any person.

Officers

3. The Commissioner may appoint any person to carry out the provisions of this Ordinance.

General Provisions

4. No owner shall allow a dog to remain unfed or unwatered sufficiently long either to amount to cruelty or to cause the dog to become a nuisance.

5. No person shall punish or abuse a dog in a manner or to an extent that is cruel or unnecessary.

6. No owner shall permit a dog to run at large within any area that may be defined by the Commissioner or contrary to a by-law made by a Local Trustee Board under the Local Administrative District Ordinance.

7. No person shall, unless so authorized by an officer in writing, sell a dog to a person who is not a resident of the Territories.

8. (1) No person shall have a dog in harness within any settlement or within one half-mile of any settlement in the Territories unless the dog has a muzzle or is under the custody and control of a person over sixteen years of age who is capable of ensuring that the dog will not harm the public or create a nuisance.

(2) No person shall drive a dog or dog team on a sidewalk situated on the street or road of a settlement.

(3) This section does not apply in any Local Administrative District established under the Local Administrative District Ordinance.

Seizure

9. (1) An officer may seize a dog from a person whom he finds violating this Ordinance or whom he has good cause to suspect of having violated or being about to violate this Ordinance.

(2) Subject to subsection six, an officer who has seized a dog under subsection one may within his discretion restore possession of the dog to the owner thereof where

(a) the owner claims possession of the dog within five days after the date of seizure; and

(b) the owner pays to the officer all expenses incurred in securing, caring for and feeding the dog.

(3) Where, at the end of five days, possession of the dog has not been restored to the owner under subsection two, the officer may sell the dog at public auction.

(4) The proceeds of the sale of a dog by public auction shall be distributed in the following manner,

(a) all expenses incurred in securing, caring for and feeding the dog shall be paid to the officer;

(b) the expenses of the public auction shall be paid; and

(c) the balance, if any, shall be paid to the owner.

(5) Where a dog has not been reclaimed within five days after seizure under subsection two and no bid has been received at a sale by public auction, the officer may destroy or dispose of the dog as he sees fit at any time after the auction and no damages or compensation may be recovered on account of its destruction or disposal by the officer.

(6) Where, in the opinion of the officer, a dog seized under this section is injured or should be destroyed without delay for humane reasons or for reasons of safety, the officer may destroy the dog as soon after seizure as he thinks fit without permitting any person to reclaim the dog or without offering it for sale by public auction and no damages or compensation may be recovered on account of its destruction by the officer.

(7) Where the seizure of a dog is made for contravention of a by-law respecting dogs passed by a Local Trustee Board under the Local Administrative District Ordinance the provisions of the by-law respecting the impounding, selling or killing of dogs shall apply instead of the provisions of this section.

Protection of Other Animals from Dogs

10. A person may kill a dog that is running at large in the act of pursuing, worrying, injuring or destroying cattle, horses, sheep, pigs or poultry.

11. (1) On complaint made on oath before a justice of the peace that an owner has a dog that has, while running at large, within the

preceding three months pursued, worried, injured or destroyed any cattle, horses, sheep, pigs or poultry, the justice of the peace may issue a summons directed to the owner of the dog requiring the owner to appear before him at a time and place therein stated to answer the complaint.

(2) Upon summary conviction on the evidence of one or more credible witnesses other than the complainant, the justice of the peace may make an order for the destruction of the dog within three days and where the dog is not destroyed pursuant to the order, the justice of the peace may in his discretion impose a fine not exceeding twenty dollars upon the owner.

12. No conviction or order under section ten shall bar the owner of cattle, horses, sheep, pigs or poultry from bringing an action for the recovery of damages for injury done thereto by a dog.

13. It is not necessary for the plaintiff in an action referred to in section eleven to prove that the defendant knew of the dog's propensity to pursue, worry, injure or destroy animals and the defendant's liability shall not depend upon previous knowledge of that propensity.

Offences and Penalties

14. Every person who violates this Ordinance is guilty of an offence and is liable upon summary conviction to a fine of not more than twenty-five dollars or to imprisonment for a term not exceeding thirty days.

Regulations

15. The Commissioner may from time to time make rules and regulations for carrying out the purposes and provisions of this Ordinance.

Repeal

16. An Ordinance Respecting Dogs assented to on the twenty-eighth day of December, 1928, An Ordinance Respecting Dogs assented to on the eighteenth day of June, 1937, and An Ordinance To Amend The Dog Ordinance assented to on the twenty-second day of January, 1946 are repealed.

STUDENTS' RETURNS

RETURN NO. 1

1. This Act may be cited as the "Dog's 1 Act".

2. In this Act, "owner" includes any person who has the custody, care or control of a dog.

3. Every owner 2 shall provide enough food and water for his dog 3 in order to prevent it from becoming 4 a nuisance to other people.

4. (1) No person shall abuse a dog in such a manner as to be cruel to it. 5

(2) No person shall punish a dog if the punishment is unnecessary or cruel. 6

5. No owner shall permit his dog 7 to run at large in an area prescribed by the regulations unless it is muzzled so that it is unable to bite or touch with its mouth anything outside of the muzzle. 8

6. (1) The Commissioner may make regulations

(a) prescribing anything that by this Act is to be prescribed by the regulations, 9 and

(b) generally for carrying out the purposes and provisions of this Act.

(2) The Commissioner may appoint any member of the Royal Canadian Mounted Police and any other person that in his opinion is qualified to be an officer for the purpose of carrying out the provisions of this Act. 10

7. (1) Where an owner of a dog 11 violates section 3, 4 or 5, an officer may remove the dog from his possession. 12

(2) An owner under subsection (1) 13 may recover possession of his 14 dog after he pays any expenses arising from the removal, care and feeding of the dog.

(3) Where an owner under subsection (1) does not recover possession of his dog within five days 15, the officer who removed it from his possession may sell it by public auction after he gives public notice to that effect 16 at least twenty-four hours before the sale.

(4) Out of the proceeds from 17 a sale under subsection (3), there shall be paid to the officer all expenses incurred by him and, on demand, to the owner any balance. 18

(5) If a dog is not sold at the public auction, the officer may destroy or otherwise dispose of it in any manner that he deems appropriate 19 and the owner is not entitled to any compensation for the loss of his dog.

8. Any person who violates this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding \$25 or to imprisonment for a term not exceeding 30 days.

COMMENTS

1. I do not favour the possessive in a title.² The Act is not one that belongs to a dog.

2. If the word *owner* stands alone it means any owner of anything. This should be *owner of a dog*, and that paves the way for *it* instead of *his dog*.

3. The dog might not belong to the *owner* as defined, in which case *his* is hardly appropriate.

4. So that it does not become a nuisance.

5. As to amount to (or constitute) cruelty.

6. Shall inflict cruel or unnecessary punishment.

7. No owner of a dog shall permit *it*.

8. Just *muzzled* would be enough.

9. The word *prescribed* is very useful, but it must be used as an adjective in the text of the Act - *prescribed substance*, *prescribed amount*, *prescribed form*, etc. - followed by a power to prescribe. See chapter XIX.

10. This says only that the Commissioner may appoint persons who in his opinion are qualified to be officers; it does not say that they are officers.

11. Section 4 as written could be violated by a person other than an owner.

12. Why not take possession, seize, or impound?

13. What is an owner *under subsection (1)*? The word *under* means *under the authority of*.

14. Here is *his dog* again.

15. Within five days of what.

16. To what effect? The notice is notice of the sale.

17. Of the sale.

18. And the remainder, if any, to the owner.

19. *He sees fit* would be simpler than *deems appropriate*.

RETURN NO. 2

1. This Ordinance may be cited as the "Dog Ordinance".

Administration

2. (1) The Commissioner may, by proclamation, establish muzzled-dog areas. **1**

(2) A proclamation made pursuant to subsection (1) shall be published in the Yukon Official Gazette and in at least one issue of a newspaper circulating in the place where the muzzled dog area is established if there is a newspaper so circulating.

3. The Commissioner may appoint any or all members of the Royal Canadian Mounted Police and any other person to be dog control officers. **2**

Prohibitions

4. No person owning, or having the custody, care or control of a dog shall, unless it is muzzled, permit the dog to run at large in an area designated as a muzzled dog area pursuant to section 2. **3**

5. No person owning or having the custody, care or control of a dog shall permit it to be without food or water for a sufficiently long period so that it is cruel to the dog or it becomes a nuisance. **4**

6. No person shall punish or abuse a dog in a manner or to an extent, that is cruel or unnecessary.

Impounding and Sale

7. A dog control officer may impound a dog

(a) that he finds running at large contrary to section 4, or

(b) in respect of which he has reason to believe an offence under section 4 or 5 is being or has been committed. **5**

8. (1) If an impounded dog is not claimed by its owner within five days of its being impounded, it may be sold by public auction.

(2) Twenty-four hours notice of an auction of an impounded dog shall be given by posting a notice in two prominent places in the vicinity of the auction setting forth a description of the dog and the time and place of the auction.

(3) The owner of an impounded dog is entitled to it **6** at any time before it is sold upon paying to the dog control officer all expenses incurred in impounding, feeding and caring for the dog.

9. (1) If there is no bid for an impounded dog at an auction, the dog control officer may destroy or dispose of it as he sees fit.

(2) No damages or compensation is recoverable 7 by any person for a dog that is destroyed or disposed of pursuant to subsection (1).

Penalty

10. Every person who violates section 4, 5 or 6 is guilty of an offence and is liable, upon summary conviction, to a fine not exceeding \$25 and the costs of prosecution, or to a term of imprisonment not exceeding 30 days.

Regulations

11. The Commissioner may make regulations for carrying the purposes and provisions of this Ordinance into effect. 8

COMMENTS

1. In my judgment this section is too formal and elaborate. All that needs to be said is that no person shall permit a dog to run at large in an area designated by the Commissioner.

2. It would be simpler to say that all members of the R.C.M.P. are ex officio *dog officers*, although that expression might be regarded as uncomplimentary.

3. *Unmuzzled* would be simpler than *unless it is muzzled*.

4. There are three *its* here. The first and the third refer to a dog, but the second has no antecedent. The reference to cruelty and nuisance should be adverbial - *so as to amount to cruelty*, and *so that it becomes a nuisance*.

5. This is a good section, but it is hardly necessary to paragraph. The right to impound is properly based on reasonable belief.

6. An owner of a dog is surely always *entitled* to it. I would prefer to insert another verb, as, for example, *entitled to take it*. See Chapter VIII.

7. This raises what might be regarded as a flaw in the English language. When a verb follows a singular and a plural noun, the verb agrees with the immediate antecedent, but that does not fit the two nouns. Here, no damages *are* recoverable and no compensation *is* recoverable. The dilemma could be avoided by saying *may be recovered*, or the more elaborate but somewhat awkward *no damages are, and no compensation is, recoverable*. Or, there would be less of a jar if the two nouns were reversed - *no compensation or damages are recoverable*.

8. This is much better than the original.

RETURN NO. 3

1. This Ordinance may be cited as the "Dog Ordinance".

2. In this Ordinance

(a) "Commissioner" means the Commissioner of the Northwest Territories,

(b) "dog" includes both a male and a female dog,

(c) "muzzle" means securing the mouth of a dog by a device in such manner as to make it impossible for the dog to bite anything outside the device, 1

(d) "officer" means a person appointed by the Commissioner pursuant to section 3,

(e) "owner" means any person owning or being in possession of a dog, but does not include an officer who has taken a dog into custody pursuant to this Ordinance and the officer's exemption as an owner extends only to his possession of a dog taken into custody pursuant to this Ordinance, 2

(f) "Territories" means the Northwest Territories. 3

3. The Commissioner may appoint as officers 4 such members of the Royal Canadian Mounted Police or, such other persons, as he may deem advisable.

4. No dog shall be treated by its owner in the following manner:

(a) by being deprived of food or water for such length of time that would be cruel to the dog, or that would be likely to cause the dog to become a nuisance, 5

(b) by being punished or abused in a manner, or to an extent, that is cruel or unnecessary 6, or

(c) by permitting 7 it to run at large within any area in the Territories prescribed by the Commissioner, unless the dog has been 8 muzzled.

5. (1) Where a dog is so 9 treated, an officer may take the dog into custody and confine it for a period of five days, or for a shorter period 10 if the owner of the dog claims and takes possession of the dog.

(2) The owner of a dog taken into custody and confined by an officer is entitled to take possession of the dog where he has not been found guilty of an offence and fined pursuant to section 7, 11 if he reimburses the officer for all expenses incurred by the officer in caring for and feeding the dog.

6. (1) Where the owner of a dog taken into custody and confined does not take possession of the dog **12**, an officer shall hold a public auction for the sale of the dog after a notice has been posted in a public place advertising the sale for at least twenty-four hours.

(2) The proceeds from **13** the sale of the dog shall be disbursed in order of priority as follows:

(a) to the officer, an amount being the expenses incurred by him in caring for and feeding the dog;

(b) to the court, an amount being the unpaid portion of a fine imposed on the owner pursuant to section 7; and **14**

(c) to the owner upon his request, the balance if any of the proceeds.

(3) Where the dog is not sold at the public auction, an officer may, at any time destroy or dispose of the dog in such manner as he may deem advisable, and if the dog is destroyed or disposed of the owner of the dog is **15** entitled to compensation or damages for the dog or by reason of its destruction or disposal.

7. (1) Where an owner treats a dog in the manner described in section 4 he is guilty of an offence and is liable on summary conviction to a fine of not more than twenty-five dollars and to the costs of the prosecution or to a term of imprisonment not exceeding thirty days. **16**

(2) Where an owner is guilty of an offence and is held to be liable for the payment of a fine he is entitled to take possession of the dog if he reimburses the officer for all the expenses incurred by the officer in caring for and feeding the dog, and if as may be required by the officer, he pays the fine. **17**

8. The Commissioner may make such regulations as he deems advisable for the carrying out of the intent and meaning of this Ordinance. **18**

9. This Ordinance comes into force on the first day of October, 1929.

COMMENTS

1. The word *muzzle* is defined as a verb, which I think it should be, but I would prefer *to secure* instead of *securing*. However, as previously indicated, a *muzzle*, or *to muzzle*, need not be defined. This definition fits a cage, but not a strap. Performing bears, for example, are muzzled by a strap rather than a cage.

2. There is substantive material in this definition that should be in the body of the Act, if it is included. However, why should not an officer be

subject to the Act if he neglects to feed a dog in his custody or mistreats it?

3. This is not necessary.

4. I would make members of the R.C.M.P. ex officio officers. And the Commissioner would not appoint a person unless he deemed it advisable. This section, along with the definition, does not say what the officers are or what their powers or functions are.

5. It is not the length of time that is cruel; it is the deprivation. What is needed here is a verb modifier - *so as to amount to cruelty* and *so as to be likely to cause the dog to become a nuisance*.

6. Three separate ideas are put together in this section, compelling circumlocution. Instead of saying that no dog shall be treated by its owner by being punished or abused it would be much simpler to have a separate provision to the effect that no owner of a dog shall punish or abuse it.

7. The word *permitting* does not fit the opening word *treating*.

8. The perfect tense should not be used here. If a dog has once been muzzled but now runs at large unmuzzled the prohibition as written would not apply.

9. The *so* relates to the first line of section 4; that is too far away.

10. How long a period? The correct idea is *unless sooner taken*.

11. If an owner was once convicted of an offence with respect to an earlier dog, he would under this provision as written never be entitled to take possession of a later different dog.

12. Within five days?

13. *Of* instead of *from*.

14. This mixes police and judicial functions. Payment of expenses to an officer and payment of a fine are separate matters that should be dealt with separately.

15. The word *not* was inadvertently omitted.

16. We have here the A + B or C situation. What are the alternatives? I would start a section like this adjectively instead of adverbially - *an owner of a dog who treats it*.

17. It is the court and not the officer that requires payment of the fine.

18. In my opinion *such regulations as he deems advisable* is too wide a power. These words virtually oust the courts.³

RETURN NO. 4

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

2. In this Ordinance,

“owner” includes a person who has possession, custody or control of a dog;

“officer” means a person appointed by the Commissioner to carry out the provisions of this Ordinance; and

“muzzle” means a protective device worn around the mouth to prevent a dog from touching with the mouth or biting, persons or things. 1

3. No owner shall deprive his 2 dog of food, water or medical treatment sufficient for its sustenance and well-being. 3

4. No person shall physically abuse, or inflict unnecessary pain or discomfort on, a dog. 4

5. No owner shall permit, cause or allow his unmuzzled 5 dog to run at large in the Northwest Territories within any area defined by the Commissioner.

6. An officer may capture and detain for a period of up to 6 five days,

(a) any dog, the owner of which, in respect of that dog, has contravened sections 3, 4 or 5, and 7

(b) any dog that is found to be in need of care. 8

7. The owner of a dog captured and detained pursuant to section 6 may at any time recover possession of it from an officer upon payment of all expenses incidental 9 to its capture, detention and maintenance.

8. Where the owner does not recover the dog within five days of its capture, the officer, after giving twenty-four hours' public notice of sale shall put the dog up for sale by public auction. 10

9. The proceeds of sale shall be applied in payment of the expenses referred to 11 in section 7, and the surplus, if any, shall be paid to the person entitled, on demand.

10. Where a dog offered for sale at public auction remains unsold, an officer may dispose of it in any manner and he shall be immune from civil liability in respect of such disposition. 12

11. The Commissioner may make regulations as he deems necessary 13 for the purpose of carrying out the objects of this Ordinance.

12. Any person who violates the provisions of section 3, 4, or 5 is guilty of an offence and is liable on summary conviction to a fine of not more than twenty-five dollars or to a term of imprisonment not exceeding thirty days.

COMMENTS

1. Here the noun is defined. Definition of the verb would fit section 5 better.

2. *His dog* fits an owner but not a custodian. It would be better to say *no owner of a dog shall deprive it*.

3. This is much too wide. Would it be an offence to feed a dog insufficient protein or vitamins?

4. Too wide. Brushing a dog, cutting its toe nails, spraying flea spray or putting a dog out on a cold winter morning might well cause discomfort.

5. See comment 1 above.

6. The *up to* is not needed.

7. The right to capture and confine should be based on reasonable belief that an offence has been or is being committed. *Sections* should be singular.

8. My dog has fleas or should have its hair cut; it is therefore in need of care.

9. Only incidental expenses are required to be paid; the expenses of capture, detention and maintenance are main and not *incidental* ones.

10. Why not say *sell* the dog instead of *put the dog up for sale*?

11. The expenses referred to are only the incidental expenses.

12. It would be better to deny compensation than to grant immunity from civil liability.

13. The words *as he deems necessary* grant too much power.⁴

RETURN NO. 5

1. (1) Any person who owns, has the control or custody of, or is in possession of a dog shall 1

(a) provide it with adequate food and water so as to prevent being cruel to it or forcing it to be a nuisance,

(b) not punish it cruelly or unnecessarily or abuse it, or 2

(c) not permit it to run at large in an area defined by the Commissioner as a muzzle restricted area 3, unless the mouth of

the dog is covered with a muzzle so that the dog cannot touch with its mouth or bite anything outside the muzzle.

(2) Any person who violates subsection (1) is guilty of an offence and is liable to a fine of not more than twenty-five dollars and costs or a term of imprisonment not exceeding thirty days.

2. A Commissioner shall be appointed and he may make regulations as he deems necessary for carrying out the purposes of this Act. **4**

3. The Commissioner may appoint as an officer any person, including any member of the Royal Canadian Mounted Police, he thinks suitable and necessary to carry out the provisions of this Ordinance or its regulations. **5**

4. (1) Subject to subsection (2), an officer may take charge of and keep for five days any dog

(a) not provided with adequate food and water so as to be kept cruelly or so as to become a nuisance,

(b) punished cruelly or unnecessarily or abused, or

(c) permitted to run at large in an area defined by the Commissioner as a muzzle restricted area, without its mouth covered with a muzzle so it cannot touch with its mouth or bite anything outside the muzzle. **6**

(2) Any person who owns or has possession of a dog may claim his dog kept **7** under subsection (1) as soon as the officer is paid all expenses incurred by officers in securing, caring for and feeding the dog.

5. (1) If a dog kept under section 4 is not claimed **8** the dog may be sold by an officer at a public sale. **9**

(2) Notice to the general public of the time and place of the sale must be given for at least twenty-four hours before the sale. **10**

(3) Proceeds from the sale shall be paid to the officer to cover all expenses incurred by officers in securing, caring for and feeding the dog. **11**

(4) The balance of the proceeds, if any, shall be paid to the person who owned, had control or custody of, or was in possession of the dog immediately before it was kept under section 4.

6. (1) An officer may, in any manner he deems fit, destroy or dispose of any dog not bid for at a public sale.

(2) No damages or compensation are given **12** for the disposal of a dog under subsection (1).

COMMENTS

1. This section imposes a duty; it should be a prohibition.
2. As the original shows, this provision applies to all persons and not just to owners or custodians.
3. The area defined by the Commissioner does not need to be given a special name.
4. There is a misconception here. The Commissioner is the head of the territorial government and his appointment is provided for in the Northwest Territories Act. See previous comments on *as he deems necessary*.
5. See previous comments.
6. This section repeats the language of section 1. Repetition could be eliminated by saying *in respect of which he reasonably believes that an offence under section has been or is being committed*.
7. The dog is not *kept under subsection (1)*. In any case, on the sixth day the *owner* would have no right to *claim* the dog.
8. Here we have *claimed* again. See Chapter VIII. And there should be added *within five days after it was taken*.
9. A public sale is not necessarily a sale by auction. An ordinary sale in a store is a public sale.
10. This subsection should be expressed as a condition to the right to sell.
11. This subsection and subsection (4) should be written together as one provision.
12. *Payable* instead of *given*.

RETURN NO. 6

1. In this Ordinance
 - (a) "dog" includes both genders of the species *canis familiaris*; 1
 - (b) "owner" means a person who owns, or has custody or control of a dog;
 - (c) "officer" means a person appointed by the Commissioner to enforce the provisions of this Ordinance and the regulations;
 - (d) "regulation" means a regulation made under the provisions of this Ordinance. 2
2. When, as a result of being deprived of food or drink, a dog suffers cruelty or becomes a nuisance the owner of the dog is guilty of an offence punishable on summary conviction. 3

3. When cruel or unnecessary punishment is inflicted on a dog the owner of the dog is guilty of an offence punishable on summary conviction. 4

4. When an unmuzzled dog is found running at large within an area designated as a prohibited area under the regulations the owner of the dog commits an offence punishable on summary conviction. 5

5. An officer who, on reasonable grounds, believes that there has been a violation of this Ordinance or the regulations may apprehend the dog by means of which 6 he believes the violation was committed.

6. An owner of a dog apprehended pursuant to section 5 is not entitled to repossess the dog until he has paid all the expenses incurred in apprehending and caring for the dog.

7. (1) A dog apprehended pursuant to section 5 may be sold by public auction, but no such sale shall take place within,

(a) five days after the day of the dog's apprehension 7, and

(b) one day after notice of such sale has been published in a public place. 8

(2) The proceeds of such a sale shall be applied 9 to any expenses outstanding 10 for the apprehension and care of the dog, and any surplus shall be paid to the owner on demand by him.

(3) If, on such a sale, no bid is received for the dog an officer may,

(a) destroy the dog, or

(b) dispose of the dog in any other manner.

(4) No action lies against an officer for destroying or otherwise disposing of a dog pursuant to this section.

8. An owner who violates 11 any of the provisions of this Ordinance and the regulations 12 is liable on summary conviction to a fine not exceeding twenty-five dollars and costs, or to a term of imprisonment not exceeding thirty days.

9. The Commissioner may make regulations,

(a) appointing members of the R.C.M.P., and other persons he deems suitable, to enforce the provisions of this Ordinance and the regulations;

(b) designating areas within which dogs are prohibited from running at large; 13

(c) generally as he deems may be expedient 14 for carrying out the provisions of this Ordinance.

COMMENTS

1. Except in some technical Acts dealing with botany, weed control, narcotics, etc., I would avoid using Latin names.

2. Modern Interpretation Acts say that a reference to a regulation, unless the context otherwise requires, means a regulation made under the Act in which the reference is made.

3. If I leave my dog in a boarding kennel and go on vacation, and the kennel keeper deprives my dog of food or drink, then under this provision I am deemed guilty of an offence.

4. If I take my dog for a walk and a passing stranger kicks it, then under this provision I am deemed guilty of an offence.

5. Here again, if my neighbour takes my dog for a walk and lets it run at large unmuzzled I am deemed guilty of an offence.

6. The violation is committed *in respect of*, and not *by means of*, the dog.

7. The word *apprehension* has many meanings. I would prefer *after the day the dog was apprehended*. Perhaps the word *apprehend* will do, but it usually means to arrest "in the name of the law", and one gets the image of an officer seizing a dog by the neck and saying "you are under arrest".

8. This is a peculiar requirement, and I fail to understand it. It would seem that the dog could never be sold since any day after the notice is *one day* after the notice.

9. Applied *in payment of*.

10. *Incurred* rather than *outstanding*.

11. Sections 2, 3 and 4 do not impose any obligation on an owner; therefore there can be no *violation* by an owner.

12. As this provision is written violation of the Ordinance is not enough. It must be shown that there also was a violation of a regulation.

13. This is too wide. The power of the Commissioner is only to designate areas in which unmuzzled dogs must not be permitted to run at large.

14. See previous comments on *as he deems expedient*.

EXERCISES

EXERCISE No. 1

Short Title

1. This Ordinance may be cited as the "Dog Ordinance".

Interpretation

2. In this Ordinance,

(a) "Commissioner" means the Commissioner of the Northwest Territories.

(b) "Officer" means any person appointed by the Commissioner to carry out the provisions of this Ordinance, or of any regulations made thereunder.

(c) "Owner" includes any person having the custody or control of a dog.

(d) "Territories" mean the Northwest Territories of Canada.

Officers

3. The Commissioner may appoint any member of the Royal Canadian Mounted Police, or other person whom he deems suitable, to be an officer.

General Provisions

4. No dog owner

(a) shall permit his dog to remain unfed for such time as may amount to cruelty to the animal, or cause it to become a nuisance,

(b) shall ill treat or punish his dog in a manner that is cruel or unnecessary, or

(c) shall permit his dog to run at large within any area of the Northwest Territories that may be determined by the Commissioner, unless it is muzzled in such a manner as to make it impossible for the dog to bite.

Penalties

5. Every dog owner who violates section 4 is guilty of an offence and is liable upon summary conviction to a fine not exceeding twenty-five dollars, or to a term of imprisonment not exceeding thirty days.

6. (1) An officer may, for a breach of section 4, seize any dog and keep it for a period of five days unless it is sooner claimed by its owner who shall not be entitled to recover possession of the dog until payment is made to the officer of all expenses incurred by him for keeping and feeding same.

(2) The officer may, if he deems it desirable, keep the dog until payment of the fine and costs that may be imposed upon the owner under section 5.

(3) The officer may, if the owner does not take back possession of his dog within five days from the date of its seizure, cause it to be sold by public auction after giving a twenty-four hours public notice of his intention so to do, and

(a) the expenses incurred by the officer for keeping and feeding the dog, and

(b) any part of the fine and costs imposed upon the owner under section 5 that remains unpaid

shall be deducted out of the proceeds of the sale before paying the balance, if any, to the owner on demand.

(4) The officer may, if there is no bid for a dog that is offered for sale by public auction, destroy the dog or dispose of it thereafter in such manner as he deems fit and no action for damages or compensation in connection with that dog shall lie against that officer.

Regulations

7. The Commissioner may make regulations for carrying out the purposes and provisions of this Ordinance.

Commencement

8. This Ordinance shall come into force on the first day of October, 1929.

EXERCISE NO. 2

Short Title

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

Interpretation

2. In this Ordinance,

(a) "Commissioner" means the Commissioner of the Northwest Territories;

- (b) "dog" includes the female of the species;
- (c) "muzzled" means covered by a muzzle over the mouth in such manner as to make it impossible for the dog so secured to touch with the mouth or bite anything outside the muzzle;
- (d) "officer" means any person appointed by the Commissioner to carry out the provisions of this Ordinance or any regulations made thereunder;
- (e) "owner" means any person who is in possession or having the control or custody of one or more dogs; and
- (f) "Territories" means the Northwest Territories of Canada.

Appointments

3. The Commissioner may appoint any member of the Royal Canadian Mounted Police Force and any other person he deems suitable to be an officer within the meaning of this Ordinance.

Offences

4. No owner shall

- (a) permit a dog to remain unfed or unwatered for such a long period that it amounts to cruelty or that it causes the dog to become a nuisance;
- (b) punish or abuse a dog in a manner or to an extent that it is cruel or unnecessary; or
- (c) permit a dog to run at large in the Northwest Territories unless muzzled.

General Provisions

5. It shall be the duty of every officer to take into custody any dog which is the subject matter of an offence and keep it for a period of 5 days unless it is sooner claimed by the owner.

6. The owner shall not be entitled to recover possession of the dog unless he has paid the officer all expenses incurred in securing, caring for and feeding the dog while in the officer's custody and if the officer deems it desirable, unless he has paid the penalty imposed as provided by section 8.

7. (1) If the owner fails to recover possession of the dog in the manner provided by section 6, the officer may sell the dog by public auction after 24 hours public notice and the proceeds shall be appropriated to the expenses incurred by the officer in securing, caring for and feeding the dog and the unpaid balance of the

penalty imposed on the owner and any further balance of the proceeds shall be paid to the owner on demand.

(2) If there is no bid for a dog offered for sale by auction as provided by subsection (1), the officer may destroy or dispose of such dog in any manner as he sees fit at any time after the auction and no damages or compensation may be recovered on account of such destruction or disposal.

Penalties

8. Every person who violates section 4 of this Ordinance is guilty of an offence and liable on summary conviction to a fine not exceeding \$25 and costs or to imprisonment for a term not exceeding 30 days.

Regulations

9. The Commissioner may make from time to time rules and regulations for the better carrying out of the purposes and provisions of this Ordinance and may alter or amend such rules and regulations from time to time as is found necessary or deemed expedient.

Coming into Force

10. This Ordinance shall come into force on the 1st day of October, one thousand nine hundred and twenty-nine.

EXERCISE NO. 3

1. This Ordinance may be cited as the "Dog Ordinance".

2. In this Ordinance

(a) "Commissioner" means the Commissioner of the Northwest Territories.

(b) "owner" means a person

(i) owning; or

(ii) being in the possession of, for a time being; or

(iii) having the control of or custody of a dog.

(c) "officer" means a person appointed by the Commissioner pursuant to section 3.

3. The Commissioner may appoint any member of the Royal Canadian Mounted Police or any other person he considers suitable as an officer to carry out the provisions of this Ordinance.

4. No person owning a dog shall permit the dog to remain hungry or thirsty for a period of time so as to amount to cruelty to the dog or so as to cause the dog to become a nuisance.

5. No person owning a dog shall permit the dog to run at large in an area designated by the Commissioner unless the dog is muzzled.

6. No person shall punish or abuse a dog in any manner that is cruel to the dog.

7. (1) An officer may take possession of a dog where the dog has been kept in a manner contrary to the provisions of sections 4, 5 or 6.

(2) An owner may take possession of his dog on the payment to the officer of all the expenses incurred in securing, caring for and feeding of the dog and where the officer considers it advisable payment of any fines imposed under section 9.

8. (1) If an owner does not claim his dog within five days or if after claiming the dog he does not, within a reasonable time, pay the amounts necessary to take possession of his dog, the dog may be sold by public auction by the officer after he posts a notice for twenty-four hours stating the description of the dog and the time and place of the auction.

(2) Where the dog is sold pursuant to subsection 3, the amount realized shall be distributed with the following priorities:

(a) payment to the officer of all expenses incurred in securing, caring for and feeding of the dog;

(b) payment of any penalty imposed pursuant to section 9;

(c) payment of the balance, if any, to the owner on demand.

9. (1) Where there is no bid offered for the dog at the auction, the officer may dispose of the dog in any manner he considers proper.

(2) No action for damages or compensation lies against an officer as a result of his acting pursuant to subsection (1).

10. Any person who violates sections 4, 5 or 6 is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five dollars or to a term of imprisonment not exceeding thirty days.

11. The Commissioner may make regulations as he deems necessary.

CHAPTER NOTES XVI

1. Comp. Leg. 77
2. Leg. F. & P. 154-155
3. See Appendix IV in Comp. Leg. at 286
4. See note 3 above

CHAPTER XVII

PARK BY-LAW

The main purpose of this assignment is to give experience in developing general principles to cover specific cases - to generalize so far as that can be done instead of to particularize.

Another purpose is to involve the draftsman in the formulation or modification of policy. While it is true that the main function of a draftsman is to give formal expression to policies prescribed by others, the draftsman must necessarily be involved in policy for the simple reason that he must be satisfied that the prescribed policy will work and will achieve the desired objective.

I have imagined a situation where many residents of a city write letters of complaint to the mayor concerning conduct in city parks; these complaints will generally be specific. Finally, the mayor dumps the whole file on the desk of the city solicitor and says "do something". He must now develop the policy and write a by-law. The assignment is as follows:

A city owns and maintains a public park. The park has lawns, shrubs, flowers and trees. It is intended for the enjoyment of residents, and they are to be permitted to walk or lie on the lawns.

The residents have complained to the city about activities in the park that seriously impair their enjoyment of it, and the city has asked you to prepare a by-law that will prevent these activities so far as is reasonably possible. The complaints are that people coming to the park do the following things:

Damage or destroy vegetation

Litter

Shoot off firecrackers

Rake leaves on their yards and dump them in the park

Play golf, baseball and football

Ride bicycles

Consume alcoholic beverages

Make public speeches

Gamble

Shoot birds and squirrels and destroy birds' nests and eggs

Permit dogs to run at large

Damage park benches

Sell newspapers, trinkets, souvenirs, etc.

Gangs of boys have fights

Shouting and swearing

Making fires

Roam around the park at night

Smash light globes

Have parades and carry flags, banners and placards

Play at high volume transistor radios

Two extremes are to be avoided. One is to write a general provision that is so broad that it will prohibit many things that should not or are not intended to be prohibited.

The other extreme is to write a long list of specific prohibitions, as those of the National Battlefields Commission.¹ They read as follows:

BY-LAW RESPECTING THE PARK

1. It is forbidden

(a) To spoil, break, damage or remove in any way whatever any part of the fences, kiosks or pavilions, greenhouses, benches, seats, lamps, lamp posts, lighting apparatus, trees, shrubs, plants of any kind, grass plots or flowers in the said park;

(b) To walk on the grass plots in the said park;

(c) To lie down on the grass or in the paths or on the benches;

(d) To foul, soil or muddy the waters in the said park;

(e) To play ball, lacrosse, football or other games or exercises in the said park, except in the parts thereof that may be reserved for such purpose by the Commission and under such regulations as the Commission may direct;

(f) To play at games of chance or to have any instrument or thing used for the playing of such games, in the said park;

(g) To preach sermons or to make political or other speeches or harangues in the said park;

(h) To organize or set in motion there any civic or other parade, military exercise or procession or to play musical instrument whatever, without the written permission of the National Battlefields Commission;

(i) To climb the trees or the fences or to stand up on the benches and seats;

- (j) To molest or hurt the birds in the said park;
- (k) To offer or expose for sale newspapers, merchandise or provisions in the said park;
- (l) To bring into or to sell, to give or to have in the said park, alcoholic or intoxicating liquors or drinks;
- (m) To put up in the said park any placard, flag, banner, advertisement or notice of any nature whatsoever, save and except the flags, placards or notices which the National Battlefields Commission may deem it advisable to put up or place therein;
- (n) To fight, be intoxicated or to insult in any way whatever the people in the said park;
- (o) To wear therein any mask or disguise, to expose indecent objects or to indecently expose the person;
- (p) To fire or throw stones or other projectiles;
- (q) To carry offensive weapons or firearms;
- (r) To create a noise or a tumult, to shout or to sing;
- (s) To explode fire crackers or set off rockets or other fireworks in the said park, without the Commission's express permission in writing;
- (t) To throw or deposit in the said park any dead animal, carcass or dirty or foul smelling thing;
- (u) To throw or deposit any paper, glass or other refuse except in the receptacles intended for the same;
- (v) To pile or deposit snow, ashes, garbage, or materials of any nature within the limits of the said park;
- (w) To make a fire in said park for any purpose whatsoever;
- (x) To displace or remove, write on or mark stones, stakes, fences, buildings or other appurtenances.

A somewhat better by-law, but still much too detailed, is Part IV of the regulations made under the Federal District Commission Act.² It is as follows:

FEDERAL DISTRICT COMMISSION ACT GENERAL PROHIBITIONS

23. No person shall leave waste paper or other debris lying upon the ground or in any building or in any other place upon any property under the control of the Commission except in such places as are or may be specifically designated for such purpose.

24. No person shall cut, break, injure, deface, defile, or ill-use any building, fence, bridge, sign, lights, or other construction, or any tree, shrub, plant or turf, or any other property under the control of the Commission or cause or permit the same to be done, or have possession illegally of any tree, shrub, or plant, or any part thereof, taken from the property under the control of the Commission.

25. No person shall disturb or injure, or cause or permit to be disturbed or injured, any bird, bird's nest, bird's eggs, or any squirrel, or other animal within any of the property under the control of the Commission.

26. No person shall throw stones or other missiles or carry or discharge firearms, firecrackers, torpedoes, or fireworks, or make fires except in specially designated places in any of the property under the control of the Commission.

27. No person shall bathe in any waters under the control of the Commission except as permitted by the Commission, and no person shall make use of any property under the control of the Commission for the purpose of bathing in waters not under the control of the Commission except at such places as may be specifically designated for such use and subject to such other regulations as may from time to time be imposed.

28. No person shall sell or offer or expose for sale any drink, goods, or wares, or post or display signs, placards, flags, or advertising devices, or solicit subscriptions or contributions in any of the property under the control of the Commission without first obtaining permission in writing from the Commissioner to do so.

29. No person shall expose in any of the property under the control of the Commission any table or device upon, or with, or by which, any game of chance or hazard may be played; and no person shall play at any such table or device or otherwise in any of the said property any such game with cards, dice, or any device whatever.

30. No person shall play ball or any other game in any of the property under the control of the Commission except in such portions thereof as may be specifically designated for such purpose.

Both of these by-laws were given to students to show them what not to do, and to suggest expressions that might be used in framing a proper by-law.

The first problem is to develop principles. I formulated three, although others might formulate different ones. One purpose of the by-law would be to protect things in the park - vegetation, park property such as benches and tables, and wild life in the park. A second purpose would be

to preserve the character of the park - it is not to be a dumping ground or an arena for playing spectator games. A third purpose would be to protect people in the park from injury or from interference with their enjoyment of the park. Some undesired activities would not be included in these principles and they would have to be dealt with specifically, but specific activities should be held to a minimum.

If the by-law is founded on these three principles, a particular activity might be placed in one category rather than another, or even in both, but that would not matter.

The first principle - protection of things in the park

No person shall wilfully 1

(a) damage or remove any of the vegetation of 2 a public park or any property under the control or administration of the Commissioner of Public Parks 3; or

(b) molest, injure, destroy 4 or take any bird or animal or any bird's egg or nest in a public park.

COMMENTS

1. The word *wilfully* is not normally used in prohibitions. The absence of words like *knowingly* or *wilfully* does not remove mens rea as an ingredient of the offence; it merely relieves the prosecution of the burden of proving knowledge.³ Here is a case where *wilfully* might be used. A person walking on a lawn knows that he might be damaging a blade of grass or a small flower, but there is no real will to do so.

2. The vegetation must be identified. It should not be an offence under a by-law such as this to stand inside a park and by throwing a stone damage a flower in adjoining private property.

3. This is not complete. Some property in a park might belong to a telephone or electric company.

4. Some students felt that *destroy* did not include *kill*. I did not agree. Furthermore if a distinction is made the paragraph would have to be re-cast because *kill* does not fit *egg* or *nest*.

This might be a case where a little extra, although legally unnecessary, language could be used. The by-law might well be posted in the park, and it is aimed at persons of all ages. Specific mention of the things that are likely to be done might not be undesirable. The section could be expanded slightly as follows:

1. No person shall wilfully

(a) damage, destroy, or remove any tree, plant, flower, shrub or other vegetation being part 1 of a public park;

(b) damage, deface or destroy any property or facilities serving the purposes of a public park ² or being under the control or administration of the Commissioner of Public Parks;

(c) molest, injure, kill or take any bird or animal or destroy or take any bird's egg or nest in a public park.

COMMENTS

1. In the first effort only vegetation was mentioned, and it was identified as vegetation of a park. Would vegetation *being part* of a park be better?

2. This first part is new and is intended to include property in the park not under city control; but not any property - only property serving the purposes of a park.

The second principle - preserving of character of the park

2. No person shall leave or deposit waste material in a public park except in a receptacle provided for that purpose.

There are a number of problems to be considered here. As written, it would not be an offence for a resident of premises adjoining a park to put refuse into a container in the park. There is also a verb problem - should it be one or more of *leave, deposit, dump, put, throw, discard*, etc? Of course, the simpler the better.

Some students prohibited the discard of *litter*. A bundle of newspapers carried through a park is not litter; it does not become *litter* until it is scattered. Hence, one can litter, but, in my view, it is not strictly correct to say *deposit litter*.

Then there is the description of *material*; the word used must be qualified in some way. Fertilizer, weed killer or fresh soil is material, but it should not be an offence to scatter or spray it on the lawns. In the foregoing draft the word *waste* has been inserted.

There is also the question whether only one word, such as *material*, should be used, or whether there should be more words, as in the samples given earlier. In students' returns, words such as *paper, glass, food scraps, rubbish, refuse, bottle, can, cigar or cigarette wrapper, paper product, brush, paper product, garbage, dead animal, carcass, foul smelling thing*, etc., were used. There is some justification for naming some specific items that are normally thrown down, for the reason mentioned earlier, namely, that the regulations are aimed at all persons of all ages. But the specifics should be held to a minimum and there must be a general term to cover what is not mentioned and to exclude what is not intended. The following is an example:

No person shall litter 1 a public park with paper, cans, bottles or other 2 material, and no person shall bring into a public park garbage, refuse debris 3 or any other waste 4 material.

1. Here, for the reasons indicated above, the more common litter material is mentioned.

2. The word *material* above is perhaps not enough. If the *ejusdem generis* rule⁴ is applied it might do; but if not, then it would have to be established (probably without difficulty) that spreading lawn seed is not littering.

3. The second clause here is designed to prevent neighbours from using park facilities to dispose of their own garbage.

4. The insertion of *waste* would be an improvement.

The third principle - protection of people in the park from injury or interference with their enjoyment of the park

3. No person shall in a public park make any unnecessary noise 1 or engage in any boisterous, tumultuous game or activity that is likely to disturb or injure other persons or interfere with their reasonable enjoyment of the park.

COMMENTS

1. There is an ambiguity here. Do the words *that is likely to disturb or injure* apply to *noise*? They should but it is not clear that they do. The words *boisterous, tumultuous* might confound the young. A lad might say "We were not playing a boisterous game; we were only cheering for our side".

We could expand somewhat as follows:

3. No person shall in a public park create a fracas 1 or tumult or make any unnecessary noise that is likely to disturb or annoy other persons, or play baseball, football, golf or tag 2 or engage in any boisterous, tumultuous or dangerous game or activity. 3

COMMENTS

1. The word *fracas* may not be generally understood. The word *fight* would be too wide since it would include a quiet-verbal disputation.

2. There is the same verbal ambiguity here as in the previous example, but it does not matter. A fracas or tumult is likely to disturb or annoy other persons.

3. The *ejusdem generis* rule should be watched here. If the specifics constitute a class the general words might be restricted to that class. If it said *baseball, football or other game*, would the *other game* be restricted

to games played with a ball? But what is the class? If it is team games then it could be held not to include golf or archery.

To avoid application of the *ejusdem generis* rule, the *class* should be destroyed. If *golf and archery* were included, then non-team and non-ball games would make it impossible to designate a class.

Some students enumerated several games and then added *or other similar game*. Similarity would then have to be established. Is archery or horseshoes *similar* to hockey, golf, baseball, football?

Other students said only *game*. That would include bridge and chess. Some said *ball games*, but that would include playing with a ping-pong paddle to which a small rubber ball is attached by an elastic band.

In one case the general words were *any other physically active game*. Is it the game or the persons playing the game that must be physically active? A children's game is physically active but hardly one to be prohibited.

In some returns there were only two or three specifics but no general words. If specific games are mentioned, the *ejusdem generis* rule must be destroyed, and there must be general words such as those above - *boisterous, tumultuous, dangerous* - and the general words should include conduct that cannot be classified as a game.

There is one very important point to be borne in mind when writing a general principle. Take baseball, for example. If only boisterous, tumultuous or dangerous games or activities are prohibited, then there would be two kinds of baseball. A quiet game played in a far removed corner of the parks with paddles and a rubber sponge ball would not fall within the general principle. In a prosecution it would be necessary to prove the game and its character; that might be difficult or impossible to do. It is much easier to draft and to prosecute if baseball as such were expressly prohibited. That would make illegal a harmless game of baseball as described above, but that would be no hardship; let the children play elsewhere.

The third principle can be expanded further as follows:

No person shall in a public park create a fracas or tumult or make any unnecessary noise that is likely to 1 disturb or annoy other persons, or play baseball, football, hockey 2 or golf 3 or engage in any boisterous or tumultuous game or activity or any game or activity that is likely to injure other persons or interfere with their reasonable enjoyment of the park 4.

COMMENTS

1. The expression *is likely to* is the equivalent of *calculated*, but might be more readily understood.

2. Hockey is not played with a ball. In Canada hockey means ice hockey and it is played with a rubber disc.

3. Golf may be either a solo or a team game.

4. This adds a second general principle.

Specific Activities

The three principles discussed now cover many of the items in the enumeration set out in the assignment. However, some activities remain that do not fall within any of these principles, or there may be doubt that they do. They must therefore be dealt with specially. The following is a start:

No person shall in a public park 1

(a) permit any dog in his custody or under his control to run at large;

(b) ride a bicycle 2;

(c) consume intoxicating liquor or play at games of chance 3;

(d) engage in any commercial activity 4;

(e) hold public 5 meetings, make public speeches or hold or participate in public demonstrations;

(f) kindle any fires 6; or

(g) loiter between the hours of 10 p.m. and 6 a.m.

COMMENTS

1. Here we have the *in a public park* problem discussed in chapter III. As written here a person standing in a park but holding a dog outside the park on a leash could let it run at large outside the park. That is not what is intended.

2. Motorcycles and mopeds should be included.

3. Snakes and ladders and other children's board games are games of chance.

4. The original complaint is against selling articles. Insurance, magazine subscriptions, real estate, would not be included. Something must be added to prevent visitors to the park from being importuned by insurance, magazine, real estate sales people. But a purely private transaction, such as selling a cigarette lighter to a friend should not be prohibited. Hence, the expression *commercial activity* is used.

5. The word *public* has been inserted. A school teacher giving her class a nature lesson in a park would be holding a meeting, but it would not be a public meeting, speech or demonstration.

6. Lighting a pipe by a pipe-smoker might be said to be *kindling* a fire, but the maxim *de minimus non curat lex* would no doubt apply.

We can expand this draft somewhat for the reasons indicated earlier and remedy some of the flaws by re-writing as follows:

No person shall in a public park

(a) permit any dog or other animal under his custody or control to run at large **1**, or keep any dog or other animal on a leash or rope more than six feet in length; **2**

(b) ride a bicycle, motorcycle or moped; **3**

(c) consume beer, ale, spirits or any intoxicating beverages; **4**

(d) gamble with dice, cards, roulette or by means of any other game or device; **5**

(e) sell newspapers, merchandise, food, drink or other articles or materials **6** or engage in any other commercial activity;

(f) kindle any fires except in places or facilities provided therefor;
7

(g) hold public meetings, preach sermons **8**, make political or other public speeches or hold or participate in public demonstrations, agitations, protests or parades; or

(h) loiter or wander about between the hours of 10 p.m. and 6 a.m. **9**

COMMENTS

1. The *in a public park* problem has not yet been cured.

2. In some returns there was provision for keeping a dog in a park on a chain or leash. In that case the length should be specified; a fifty-foot leash would not do.

3. In some returns the mere bringing of a bicycle into the park was prohibited. The prohibition is riding a bicycle, because that might cause injury. The usual practice is to dismount the vehicle and lead it through the park.

4. This would undoubtedly be prohibited by provincial liquor Acts, and some activities dealt with earlier would be offences under the Criminal Code. Why include these provisions here? There are two answers. First, any fines levied would go to the city rather than the province. Secondly,

the penalties prescribed in the Criminal Code (wilful damage to property) are in many cases very severe. In most cases here a modest penalty would suffice, but if the damage, for example, was extensive there could then be a prosecution under the Criminal Code. In that case, however, the prosecution would have to be conducted by provincial authorities rather than the city solicitor.

5. There is a difference between gambling and playing a game of chance. A game of chance might be a harmless children's board game, but gambling means to play games of chance for money or property. But the word *gamble* alone might go too far. Two people might bet on what make of car will pass first, or what bird will fly away last. The intention is to prevent what might be called professional gambling, so it might be desirable to mention the devices used for such gambling.

6. This names the articles that might usually be sold and would prevent the setting up of shops or restaurants; but the general prohibition against commercial activity must be retained.

7. In many parks cooking areas are provided.

8. Religious sermons might create a riot.

9. This would not prevent a person from walking home through the park.

We can improve the draft further as follows:

4. (1) No person shall permit a dog or other animal under his custody or control to run at large in a public park, or keep any dog or other animal in a public park on a leash or rope more than six feet in length. 1

(2) No person shall in a public park

(a) ride a bicycle, motorcycle or moped;

(b) consume beer, ale, spirits or any other intoxicating beverage;

(c) gamble with dice, cards, roulette or any other device;

(d) sell or offer for sale newspapers, merchandise, food, drink or other articles or materials or engage in any other 2 commercial activity;

(e) kindle any fires except in places or facilities provided therefor;

(f) hold public meetings, preach, sermons, make political or other public speeches or hold or participate in public demonstrations, agitations, protests or parades; or

(g) loiter or wander about between the hours of 10 p.m. and 6 a.m.

COMMENTS

1. Dogs must be dealt with in a special provision. Here it is now clear that what is aimed at is permitting a dog to run at large in the park. Thus, it would not be an offence for a person who is in a park from letting a dog run at large outside the park; but it would be an offence for a person who is outside the park from permitting a dog to run at large in the park.

2. The word *other* here implies that the *selling* referred to must be of a commercial nature.

CHAPTER NOTES XVII

1. Under S.C. 1908, c. 57
2. S.C. 1926-27, c. 55
3. Const. Stat. 155
4. See const. Stat. 86-95

CHAPTER XVIII

FRUIT AND VEGETABLE DEFINITIONS

This assignment was intended more as a thinking rather than as a drafting exercise. The seminar sessions on this exercise were in the nature of demonstrations rather than commentaries on students' returns. The objective was largely to give experience in moving from the specific to the general - or, in other words, from detail to principle.

The assignment is as follows:

FRUIT & VEGETABLE DEFINITION

Devise two definitions in general descriptive terms to go into the same instrument, one for "fruit" and one for "vegetable" so that

- (a) each product listed below will fall into one definition but not the other,
- (b) the definitions will correspond as closely as possible to what is generally understood by those terms,
- (c) what are commonly known as nuts will not be included in either definition, except peanuts,
- (d) plant products that are primarily used only for flavouring or decoration will not be included,
- (e) wheat, oats, barley, rye and other cereals, except corn (i.e. maize) will not be included, and
- (f) unlisted products commonly regarded as fruits or vegetables will fall within one of the definitions as may be appropriate.

LIST OF PRODUCTS

apples	cherries	pears	turnips
artichokes	chicory	peanuts	watermelon
asparagus	corn	peas	
bananas	cucumbers	plums	
beans	grapes	potatoes	
beets	green peppers	raspberries	
broccoli	leeks	rhubarb	
brussel sprouts	lettuce	string beans	
cabbage	mushrooms	strawberries	
carrots	onions	squash	
celery	peaches	tomatoes	

It is, in a sense, an impossible assignment, for I doubt that any general definitions could be devised that would eliminate the need to mention some products specifically. The assignment is intended to see how close students could come to the theoretical ideal.

The assignment may not be a practical one. However, one can imagine a place where fruits are exported and vegetables imported and that it is desired to have a high import duty on fruits and a low import duty on vegetables.

It is impossible to write definitions that will correspond to ordinary usage. What some might call a fruit, others might call a vegetable; and although beans, peas and tomatoes are generally regarded as vegetables they are botanically fruits.

The list of products set out in the assignment is not by any means exhaustive; it is there only to indicate some of the different products that must be considered. Along with the assignment I handed out the following dictionary definitions to aid students in finding words and expressions and to save them the trouble of constantly referring to dictionaries. The definitions are:

- Arachis — some leguminous weed. Bot. A genus of leguminous plants, including one known as the Ground Nut.
- Banana — 1. A tree cultivated largely in tropical countries; it grows to a height of 20 feet.

2. The fruit of this tree, growing in clusters of angular, finger-like berries containing a highly nutritious pulp.
- Bean** — 1. A smooth, kidney-shaped, laterally flattened seed borne in long pods by a leguminous plant.
2. The plant that bears this seed.
3. The plant and seed of the allied genus including the French, Kidney or Haricot Bean and Scarlet Runner.
4. Name of the seeds of other plants resembling the common bean.
- Fruit** — 1. Vegetable products in general that are fit to be used as food by men and animals.
2. The edible product of a plant or tree, consisting of the seed and its envelope, esp. the latter when juicy and pulpy, as in the apple, orange, plum, etc.
3. A fruit-tree; also a food plant.
4. A course of fruit; the dessert.
5. The seed of a plant or tree, regarded as the means of reproduction, together with its envelope; spec. in Bot. 'the ripe pistil containing the ovules, arrived at the state of seeds'; also, the spores of cryptogams.
- Legume** — 1. The fruit or edible part of a leguminous plant, e.g. beans, peas, pulse. Hence, A vegetable used for food; chiefly in pl.
2. A leguminous plant.
3. The pod of a leguminous plant.
- Leguminous** — Of, pertaining to, or of the nature of, pulse.
2. Bot. Of or pertaining to the N.O. Leguminosae, which includes peas, beans, and other plants bearing legumes or pods.
- Nut** — A fruit which consists of a hard or leathery (indehiscent) shell enclosing an edible kernel; the kernel itself.
- Pea** — The seed or plant.
1. The round seed of *Pisum sativum* (see 2), used for food.

2. The plant *Pisum sativum*, a hardy climbing leguminous annual, with large papilionaceous flowers succeeded by long pods each containing a row of round seeds. Usu. dist. as a p-plant.

3. Applied with defining words to leguminous plants allied to the common pea.

Peanut — The fruit or seed of *Arachis*, hypogaea, or the plant itself, much cultivated in a warm climate; the fruit is a pod ripening underground, containing two seeds like peas, valued as food and for their oil.

Vegetable — 1. A living organism belonging to the vegetable kingdom or the lower of the two series of organic beings; a growth devoid of animal life;

2. A plant cultivated for food; esp. an edible herb or root used for human consumption and commonly eaten, either cooked or raw, with meat or other articles of food.

One must start with the $A = B + C$ formula. The definitions of fruit and vegetable combined must exhaust all edible products. If they are defined separately, then the sum will not necessarily equal the whole. Therefore we define one as best we can, and the other is the whole less what is defined. Instead of $PP = F + V$, we must write $PP = F + (PP - F)$, or $PP = V + (PP - V)$. The result is that if a product falls into one definition it is excluded from the other; and if a product is excluded from one definition it falls into the other. A product should not fall into both. Either fruit or vegetable could be chosen; I selected fruit as a starter, because I thought it would be easier to define than vegetable. I began with the second Oxford dictionary definition and laid my foundation as follows:

1.

“fruit” means the edible part of a plant that encloses, (e.g. peaches) surrounds (e.g. watermelon) or contains (e.g. strawberries) the seed thereof.

“vegetable” means the edible part of a plant other than the fruit thereof (i.e. as defined) but does not include

(a) cereal grains other than maize 1,

(b) any seed (other than a peanut 2) that is enclosed in a hard and inedible shell (hard and indehiscent 3 shell or husk),

(c) any plant product ordinarily used primarily for flavouring (e.g. bay leaves, cinnamon, garlic) or decoration (e.g. parsley)

COMMENTS

1. In North America corn means Indian corn only, and does not include wheat.

2. A peanut is a seed, but since peanuts are to be included in the definitions they must be excluded from the exclusion.

3. The word *indehiscent* is rather uncommon. Although it pops up occasionally in the following drafts I finally abandoned it.

We can now see a number of problems. Botanically seeds are fruits, but we want to have them in the vegetable bin because of peas and beans.

String beans are a problem. The seeds are vegetables under the above definitions, but the pods are fruits. We must therefore take string beans entirely out of fruit.

Also, the above definitions would make the seeds of strawberries and raspberries vegetables, but the pulp as fruit. The whole should be regarded as fruit.

Bananas are a problem. They do contain embryonic seeds but they are not viable. The pulp therefore does not enclose any seed.

We also have a problem with squash, pumpkin and cucumber. They are fruits under the above definition, but are commonly regarded as vegetables. Also, pumpkin and watermelon are exactly the same kind of product but the former is regarded as vegetable and the latter as fruit.

In an attempt to solve some of these problems I re-wrote as follows:

2.

“fruit” means the edible part of a plant that encloses, surrounds or contains the seed thereof, except of a plant the seed of which is a vegetable, 1 but does not include any plant product ordinarily used primarily for flavouring or decoration. 2

“vegetable” means the edible part of a plant other than the fruit thereof 3, but does not include

(a) cereal grains other than maize,

(b) any seed other than a peanut 4 that is enclosed in a hard and inedible shell, commonly known as a nut, or

(c) any plant product ordinarily used primarily for flavouring or decoration. 5

COMMENTS

1. Peas and beans, being seeds, are not fruit; therefore they are vegetables. This exception is intended to remove the pods from fruit.

However, the technique is not good because with the definition of vegetable it leads to a vicious circle.

2. This exception must apply to both definitions.

3. As defined.

4. A peanut is not a nut, although commonly called that. It can be exempted from *seed* but not from *nut*. Apples cannot be subtracted from oranges.

5. I have up to this point not dealt with the cucumber, pumpkin or watermelon problems.

My next attempt was as follows:

3.

(a) "fruit" means the edible portion of a plant that encloses, surrounds or contains the seed thereof, except 1 of a plant the seed of which is a vegetable as defined in paragraph (b), but does not include anything that is ordinarily used primarily for flavouring, seasoning or decoration.

(b) "vegetable" means the edible portion of a plant other than the fruit thereof as defined in paragraph (a), but does not include

(i) cereal grains other than maize,

(ii) any seed, other than a peanut, that is enclosed in an inedible and a hard or leathery shell 2, commonly known as a nut, or

(iii) anything that is ordinarily used primarily for flavouring, seasoning or decoration.

COMMENTS

1. This change was intended to cure the defect mentioned in comment 1 in the second draft.

2. This language comes from the dictionaries.

The next effort was as follows:

4.

(a) "fruit" means the edible part of a plant that encloses, surrounds or contains the seed thereof, except a pod 1 containing seed that is a vegetable as defined in paragraph (b), but does not include anything that is ordinarily used primarily for flavouring, seasoning or decoration.

(b) "vegetable" means the edible part of a plant other than the fruit thereof as defined in paragraph (a), but does not include

- (i) cereal grains other than maize,
- (ii) any seed, other than a peanut, that is enclosed in a hard and inedible shell 2, commonly known as a nut, or
- (iii) anything that is ordinarily used primarily for flavouring, seasoning or decoration.

COMMENTS

1. Why not simply say pod?

2. The shells of filberts, walnuts, almonds, etc. are not leathery. But they are hard.

The next draft was as follows:

5.

(a) "fruit" means the edible part of a plant that encloses, surrounds or contains the seed thereof, but not including a leguminous pod 1 or anything that is ordinarily used primarily for flavouring, seasoning or decoration.

(b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), but not including

- (i) cereal grains other than maize,
- (ii) any seed, other than a peanut, that is enclosed in a hard and inedible shell, commonly known as a nut, or
- (iii) anything that is ordinarily used primarily for flavouring, seasoning or decoration.

COMMENTS

1. Leguminous pod is sufficiently descriptive.

The following was the next draft:

6.

(a) "fruit" means the edible part of a plant that encloses, surrounds or contains the seed thereof, except a leguminous pod, but does not include 1 anything that is ordinarily used primarily for flavouring, seasoning or decoration.

(b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), but does not include 2

- (i) cereal grains other than maize,
- (ii) any seed, other than a peanut, that is enclosed in a hard and inedible shell, commonly known as a nut, or
- (iii) anything that is ordinarily used primarily for flavouring, seasoning or decoration.

COMMENTS

1. 2. The change here is the substitution of *but does not include* for the words *but not including*. I have found that in some cases there is doubt whether the exclusion is from the word defined, or from something in the definition.

The next effort was:

7.

- (a) "fruit" means the edible part of a plant that encloses, surrounds or contains the seed thereof, except a leguminous pod 1 and anything that is ordinarily used primarily for flavouring, seasoning or decoration.
- (b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), except
 - (i) cereal grains other than maize,
 - (ii) any seed, other than a peanut, that is enclosed in a hard and inedible shell, commonly known as a nut, and
 - (iii) anything that is ordinarily used primarily for flavouring, seasoning or decoration.

COMMENTS

1. In the sixth draft we have two exceptions each expressed in a different way - *except*, and *does not include*. They can both be brought under the one word *except*.

The next draft:

8.

- (a) "fruit" means the edible part of a plant that encloses, surrounds or contains the seed of the plant, except tomatoes, cucumbers, leguminous pods and anything that is ordinarily used primarily for flavouring, seasoning or decoration.
- (b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), except

- (i) cereal grains other than maize,
- (ii) any seed enclosed in a hard and indehiscent shell or husk, and
- (iii) anything that is ordinarily used primarily for flavouring, seasoning or decoration.

I now begin to deal with tomatoes and cucumbers. They are fruits, but we want them in the vegetable definition.

The next draft:

9.

1. (1) In this Act

(a) "fruit" means the edible part of a plant that encloses, surrounds or contains the seed of the plant, except tomatoes, cucumbers and leguminous pods.

(b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), except

- (i) cereal grains other than maize, and
- (ii) any seed enclosed in a hard and indehiscent shell or husk.

(2) Anything that is ordinarily used primarily for flavouring, seasoning or decoration is not a fruit or vegetable within the meaning of this Act.

This is a change in arrangement. Instead of repeating the flavouring, decoration, etc. provision in each definition we can write it once for both.

The next draft:

10.

2. (1) In this Act

(a) "fruit" means the edible part of a plant containing 1 its seed, except cucumbers, tomatoes and leguminous pods.

(b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), except

- (i) cereal grains other than maize,
- (ii) any seed contained in a hard and indehiscent 2 shell or husk.

(2) Anything ordinarily used primarily for flavouring, seasoning or decoration is not "fruit" or vegetable" within the meaning of this Act.

COMMENTS

1. Here I decided that one word *contain* covers *enclose, surround or contain*.

2. I went back to *indehiscent* so as to eliminate the necessity of specifically mentioning peanuts, in the belief (right or wrong) that a peanut shell is not indehiscent.

But now we are in trouble. Seedless grapes, seedless oranges and other developed varieties do not contain seeds and neither do bananas; but they should all be fruits. We might try to cure that by inserting *seedless variety*, but a banana is not a *seedless variety*. Pineapples are also a problem. The seeds grow on a stem above the fleshy part of the plant, and are not *contained* in what is eaten.

It is apparent now that our structure has tumbled like a house of cards, and there is nothing to do but to start over again. Our foundation is wrong. I therefore laid the flower as a new foundation as follows:

11.

2. (1) In this Act

(a) "fruit" means the edible product of the flower of a plant other than its seed alone 1, including 2 coconut but not including cucumbers, squash 3, tomatoes or leguminous pods.

(b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), but does not include

(i) cereal grains other than maize,

(ii) any seed contained in a hard and indehiscent shell or husk.

(2) Anything ordinarily used primarily for flavouring, seasoning or decoration is not "fruit" or "vegetable" within the meaning of this Act.

COMMENTS

1. I have now abandoned the dictionary definitions of fruit, and defined it as the product of the flower. The exclusion of *seed alone* is intended to throw peas and beans into the vegetable bin.

2. I used *including* here, but later changed to *but does not include* to make it clear that the exclusion is from the word defined.

3. Squash was inserted here to take it out of fruit. My conclusion from reading dictionaries was that a watermelon is not a squash, and therefore watermelon would remain fruit. Not being a botanist, however, my conclusion might be wrong.

A coconut is also a problem. Is it really a *nut*? As I understand it, there is no seed in a coconut. There is a *germ* as in a kernel of wheat. It has a hard and indehiscent shell or husk. Is it fruit, vegetable or nut?

The last effort

12.

2. (1) In this Act

(a) "fruit" means the edible produce 1 of the flower of a plant other than the seed by itself 2, and includes 3 coconuts and pineapples, but does not include 4 cucumbers, squash, tomatoes or leguminous pods;

(b) "vegetable" means the edible part of a plant, other than fruit as defined in paragraph (a), but does not include

(i) cereal grains other than maize, or

(ii) any seed, other than a peanut, enclosed in a hard and inedible shell or husk. 5

(2) Anything ordinarily used primarily for flavouring, seasoning or decoration is not "fruit" or "vegetable" within the meaning of this Act.

COMMENTS

1. The word *produce* seems to be the one that is normally used rather than *product*.

2. Whatever idea there may be in *its seed alone*, the words *seed by itself* seem to express it better.

3. The inclusion is to the word defined.

4. The exclusion is from the word defined.

5. I have gone back to plain ordinary words and specifically excluded peanuts.

As indicated earlier, the definitions must be such that a particular product falls within only one definition, and if a particular product does not fall within one it must necessarily fall within the other.

Secondly, the two definitions when taken together must constitute the whole.

The first step is to decide which word is to be defined. If it is fruit, then vegetable is everything else but fruit. If it is vegetable, then fruit is everything else but vegetable. I selected fruit because I thought it would be less difficult to define fruit than vegetable.

The next step is to find a provisional dividing line. I first selected the dictionary definition as the pulp containing the seed, but then changed to the product of a flower.

STUDENTS' RETURNS

RETURN NO. 1

"fruit" means any fruit 1 fit for human consumption whether produced by a tree or vine 2, and includes peanuts or 3 corn, but does not include beans, cucumbers, peppers, peas, potatoes, yams, nuts, tomatoes, wheat, oats 4 or any other similar 5 product;

"vegetable" means any plant or plant product fit for human consumption, not being a fruit, and includes squash, watermelon or any other similar 6 product, but does not include any plant or plant product used mainly for flavouring or decoration. 7

COMMENTS

1. The definition includes the word defined, which presumably would have its dictionary meaning. To say that fruit means fruit is not a definition.

2. The dividing line seems to be manner of growth. These words may have a limiting effect; raspberries and pineapples are not produced by trees or vines.

3. The *or* should be *and*.

4. Ten products are mentioned; one of the purposes of the exercise was to name as few products as possible.

5. Does *similar* go back only to *wheat, oats*? If so, it would include only cereals. If it goes back to everything that has been mentioned, nothing can be said to be *similar* to the named products.

6. Watermelon is normally regarded as a fruit. Does *similar* mean only squash, gourds, melons, etc? Or would it include cucumbers?

7. This exclusion should apply to fruit as well.

RETURN NO. 2

"fruit" means fruit known commercially 1 as such of any kind 2 and includes peanuts, but does not include all kinds of nuts. 3

"vegetable" means vegetable known commercially as such of any kind and includes corn or maize, but does not include wheat, oats, barley, rye or any other cereals 4, or pickles, relishes, catsup, horseradish or any other similar products 5 that are primarily used only for flavouring or decoration.

COMMENTS

1. The dividing line is commerce; that merely postpones the definitions because it would be necessary to prove what a product is commercially known as.

2. The words *of any kind* are redundant.

3. The words *all kinds of* are redundant.

4. If *cereals* are excepted it is not necessary to name any.

5. The products mentioned are neither fruits nor vegetables. What are *similar* products?

RETURN NO. 3

“fruit” means fruit popularly 1 known as such including

(a) the produce of a tree that contains an edible and sweet 2 reproductive 3 body of a seed plant, or

(b) the produce of a walnut tree 4,

but does not include

(a) the produce of timber 5 trees, or

(b) the species of wild fruit 6.

“vegetable” means vegetable known popularly as such including peanuts and maize, or 7 it means any plant that is cultivated for food to be used chiefly for culinary purposes 8, but does not include

(a) wheat, oat, barley, rye and other cereal,

(b) celery, green pepper, leek, onion, rhubarb and other plant products that are primarily used for flavouring or decoration 9,

(c) nuts, or

(d) watermelon 10

COMMENTS

1. The dividing line is *popularly known*. I tried to avoid references to *commonly*, *popularly*, *commercially*, because of their vagueness. In my draft I did say *commonly known as nuts*, but that is only a very narrow reference.

2. When peaches and tomatoes are harvested for market they are unripe and not sweet. Thus, under this definition a peach when plucked would not be fruit, but would become fruit later when it ripens. Crab apples are fruit but they are sour. So are lemons.

3. The fleshy or edible part of a fruit, such as peach or apricot, is not the reproductive body. A banana is not a seed plant.

4. This would include walnuts, but nuts are to be excluded.

5. What is a timber tree? The wood from apple, peach and pear trees could surely be used to make some wooden articles.

6. Wild blueberries are commercially sold as fruits. This provision has two paragraphs (a) and two paragraphs (b).

7. Is this an alternative definition?

8. If a product is cultivated for food then it is necessarily used for culinary purposes.

9. The products listed are vegetables in their own right and are not primarily used for flavouring or decoration.

10. Watermelon is excluded from vegetable, but does not come under fruit because it is not the product of a tree.

RETURN NO. 4

1. In this Act,

“fruit” means the edible product of a tree or of a plant other than a leguminous plant, consisting of the seed and its envelope 1, but does not include plant products commercially known as vegetables 2, or what are commonly known as nuts;

“vegetable” means any plant grown for an edible part and includes

(a) tomatoes, cucumbers, watermelons and other plant products commercially known as vegetables; and

(b) peanuts and other leguminous products commercially known as vegetables 3;

but it does not include cereals other than corn, or plant products primarily used for flavouring or decoration.

COMMENTS

1. This would not include seedless grapes, bananas or pineapples.

2. 3. The essence of these definitions is that a vegetable is what is commercially known as vegetable, and fruit is any plant product not commercially known as vegetable. The result is that there are no definitions.

RETURN NO. 5

In this Act,

“fruit” means the fruit of a plant which is used as a food, but it does not include,

(a) a fruit which is commonly used as a vegetable or as a cereal, and

(b) nuts other than peanuts.

“vegetable” means any plant or produce of a plant commonly used as a food but it does not include,

(a) the produce of a plant that is a fruit within the meaning of this Act;

(b) cereals other than maize; and

(c) nuts.

COMMENTS

These definitions constitute a vicious circle. Fruit is everything that is not vegetable, and vegetable is everything that is not fruit.

RETURN NO. 6

In this Act

(i) “fruit” means the product of a plant or tree commonly known as fruit and used as such; but does not include nuts and other fruits that are primarily used as vegetables.

(ii) “vegetable” means

(a) the product of a plant commonly known as vegetable and used as such;

(b) a fruit used primarily as vegetable; and

(c) peanuts and corn, but does not include other nuts or cereals, or other plant products that are used primarily for flavouring.

COMMENTS

In essence these definitions are simply that fruit is what is commonly known as fruit and vegetable is what is commonly known as vegetable. Hence, they are not definitions. What is a *use* as fruit or vegetable?

RETURN NO. 7

1. “Vegetable” includes 1 a tomato, green pepper, cucumber and any edible root, tuber, bulb, sprout, shoot, stalk, leaf, pod, legume, flower head, fungus or gourd (other than a sweet 2 gourd), but does

not include any cereal (other than maize), or nut, or plant product that is used primarily for flavouring or decoration.

2. "Fruit" means any edible product of a plant or tree that is not a "vegetable", but does not include any cereal, or nut (other than a peanut) 3, or plant product that is used primarily for flavouring or decoration.

COMMENTS

This draft reverses my attempt. I selected fruit for definition and then called every other plant product vegetable. Here vegetable is defined and everything else is a fruit. This technique can be used, but I think this draft illustrates that it is less difficult to attempt to define fruit.

1. If only *includes* is used, then the word has also its ordinary meaning; this is therefore not a definition of vegetable.

2. What is sweet to one might be sour to another.

3. Since a peanut is strictly not a nut it cannot in logic be excepted from nuts.

RETURN NO. 8

In this Act

(a) "fruit" means the edible produce of a tree, bush or vine 1 that is eaten when mature 2 and consisting of a fleshy substance

(i) with a seed or number of seeds in the flesh or

(ii) with pits or stones in the flesh, 3

but does not include a tomato or a nut except for 4 a peanut.

(b) "vegetable" means the edible portion of a herbaceous 5 plant that is not a fruit and excludes all cereals except corn.

COMMENTS

1. Do strawberries grow on a bush or vine?

2. Some fruits (e.g. fried bananas) are eaten when not mature. Green tomatoes are eaten in pickles and relishes.

3. Bananas and pineapples do not fall in this definition. The flesh that is eaten contains neither seeds nor pits.

4. Assuming that peanut is a nut, I would prefer "other than" to "except for".

5. 6. Strawberries are herbaceous, but are they fruit as defined?

RETURN NO. 9

1. In this Act

“fruit” means any perennial plant reproductive unit matter 1, excluding all nuts but peanuts, that is used as a food for human consumption.

“vegetable” means any plant matter, excluding all fruit and all cereal grains but corn 2, that is used as a food for human consumption.

COMMENTS

1. I do not like such a piling up of adjectives. Here *perennial* modifies *plant* and *perennial plant* modifies *matter*; *reproductive* modifies *unit* and *reproductive unit* modifies *matter*. This definition would not include bananas or pineapples, nor would it include the fleshy parts of pears, apples, peaches, apricots, where the *reproductive* matter consists of seeds or pits.

2. In this type of construction I would prefer to say *but does not include fruit or cereal grains other than corn*.

RETURN NO. 10

In this Order,

“fruit” means any edible product of a plant or tree 1 that consists of the seed and its envelope 2 and that 3 is not a vegetable or product thereof but does not include nuts other than peanuts 4 and 5 cereals other than corn;

“vegetable” means

(a) any edible herb, root and product thereof 6, and

(b) any edible product of a plant or tree that consists of the seed and its envelope 7

but does not include plant products used primarily for flavoring or decoration.

COMMENTS

1. A tree is a plant.

2. Strawberries and raspberries do not have envelopes; the *fruit* of pineapple and banana do not have seeds.

3. This second *that* should be omitted.

4. See previous comments on peanuts.
5. An *or* would be better than an *and*.
6. There are many vegetables that are neither herbs nor roots, such as celery stalks, cabbage, lettuce.
7. This must be a mistake, as it repeats part of the definition of fruit. What seems to be missing is *not being* or *other than*.

RETURN NO. 11

In this Act

- "edible" 1 means commonly used for human consumption;
- "fruit" includes 2 the edible product of a tree, shrub or rosaceous 3 plant and also grapes, melons, rhubarb and peanuts;
- "vegetable" includes an edible bulb, flower, head, leaf, root, sprout, stalk, gourd other than a melon or legume other than a nut, and also corn, green peppers, mushrooms, potatoes and tomatoes, but does not include any cereal other than corn.

COMMENTS

The two words are both defined but together do not make up the whole. Where are strawberries, cucumbers, pineapples, grapes?

1. A definition of edible is not needed.
2. This is what fruit includes, but what does it mean?
3. Only a botanist could list the members of the rose family.

RETURN NO. 12

In this Act

- "fruit" means the edible pulpy mass, eaten by humans primarily for nutritive purposes 1, that develops from the flower 2 or surrounds the seed produced 3 by a plant, shrub or tree 4 and includes rhubarb but does not include nuts, legumes, tomatoes, peppers, cucumbers, squash or corn.
- "vegetable" means any edible plant or part of a plant that is eaten by humans primarily for nutritive purposes 5 except
- (a) fruit,
 - (b) cereal grains other than corn or rice, and
 - (c) nuts other than peanuts.

COMMENTS

This is one of the best returns I received.

1. The reference to *eaten by humans* is there to exclude products used for flavouring or decoration. I would prefer saying the latter directly.

2. 3. The dividing line is the flower. Good. The section would be smoother if written *from the flower or surrounds the seed of a plant*.

4. *Plant* would be enough.

5. See comment 1.

JUSTICE CANADA



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