

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1994

CRIMINAL PRACTICE AND PROCEDURE
(Wednesday, May 25, 1994)

Instructions to Students:

- (a) Time: 3 1/2 hours
- (b) Answer FIVE questions.
- (c) In answering any question a student may reply by reference to the law of any Commonwealth Caribbean territory, but must state at the beginning of the answer the name of the relevant territory.
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

Question 1

On January 14, 1994, Saukar retired to bed around 10.00 p.m. She had earlier secured all the windows and doors of her house. In the early hours of the morning of January 15, three men entered her bedroom. They aroused her from slumber and covered her mouth while some pieces of jewellery were removed from her person. Other pieces of jewellery and cash were taken from a bag in the room.

On the men's departure Saukar went and spoke to her next door neighbour who accompanied her to the Old Street Police Station. At the station she made a report. A few days later she went to an identification parade and identified Raleigh as one of the three men who came into her room on January 15. Raleigh was arrested and charged.

Draft the indictment to be presented in the Supreme/High Court.

Question 2

Dubony was charged on an indictment with robbery with aggravation. His trial proceeded in the normal manner and the jury retired to consider their verdict. The jury were unable to reach a verdict after two hours' deliberation and one of the jurors went to the door of the jury room and opened it to have a note delivered to the trial judge. The trial of Dubony on another indictment was then in progress. The police officer drew the judge's attention to

the fact that the juror might have seen the accused and realised that he was facing another trial.

Write an opinion as to the course the trial judge should pursue.

Question 3

A, B, C, and D were driving their motor cycles abreast along a public road and by driving in that formation had been an annoyance to other road users. They entered together a 30 m.p.h. speed limit zone each cyclist travelling at 50 m.p.h. D collided with a pedestrian who was knocked to the ground.

Four separate informations charged each with driving at a speed exceeding the speed limit. A fifth information charged D with dangerous driving.

All these offences are triable summarily before a Magistrate. At their trial in the Magistrate's Court the prosecution seeks leave to try all five informations together. Counsel for the defence objects contending that the Magistrate has no jurisdiction so to do.

How should the Magistrate decide?

Question 4

Lloyd Franco was charged with robbery. The issue was identity and the defence one of alibi. At an identification parade a witness identified the robber as the man in position number 5. At the trial which took place about twelve months after the parade was held, the witness failed to identify the defendant Franco as the robber but said that he had gone to an identification parade and had identified the person in position 5 as the man who had robbed him.

No evidence was adduced to the effect that Franco was in position number 5 on the parade up to the close of the prosecution's case.

In reply to a submission of no case to answer by Franco's counsel, counsel for the Crown applied to recall the police officer to say who was standing at position number 5. The application was granted by the judge. Franco gave evidence in his defence to the effect that at the material time he was with his girlfriend at her house. Franco's counsel then told the court that was the case for the defence. The trial judge asked counsel if the defendant's girlfriend was available.

In response counsel for Franco said that her name was Jane Verity and that she was outside. On the direction of the judge Ms. Verity was called into court. In her evidence she agreed that she was Franco's "ladyfriend" but denied that they were together at the material time.

Franco was convicted and sentenced.

Franco now wishes to know whether the decisions of the judge to allow the police officer to be recalled and to call Ms. Verity to give evidence were wrong.

Advise him.

Question 5

Henry was indicted on three counts of wounding with intent, larceny of a motor car and receiving the said motor car knowing the same to have been stolen. On his arraignment Henry pleaded not guilty of the offence of wounding with intent but guilty of the offence of unlawful wounding and not guilty of the offence of larceny but guilty of the offence of receiving the said motor car knowing it to have been stolen. The trial judge rejected Henry's plea of guilty of the offence of unlawful wounding. The trial thereafter proceeded on the counts of wounding with intent and larceny of motor car. The jury acquitted Henry on both counts. The trial judge nevertheless proceeded to sentence Henry in respect of the offences to which he had pleaded guilty. Henry contends that the trial judge was wrong to sentence him as he did and seeks your advice.

Advise him.

Question 6

Write notes on THREE of the following-

- (i) challenge for cause;
 - (ii) suspended sentence;
 - (iii) ordering of a new trial by the Court of Appeal;
 - (iv) the procedure when an accused stands mute on arraignment;
 - (v) the procedure when a child of tender years is called as a witness.
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Question 7

Answer either (a) or (b).

- (a) Write notes on FOUR of the major procedural differences between felonies and misdemeanours.
 - (b) Write notes on -
 - (i) appeals from the petty sessions and;
 - (ii) procedure on information charging an indictable offence in the Resident Magistrate's Court.
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Question 8

Maggs, a taxi driver, was convicted of causing the death by dangerous driving of a racing cyclist, who was taking part in a timed event. The Crown suggested that Maggs had either fallen asleep, having been driving for long periods or momentarily lost concentration when he collided with the cyclist. The accused did not give evidence, but a written record of his interview with the police was put before the jury. In that interview he had said that as he was driving along the cyclist suddenly veered towards the middle of the road. The accused had to take evasive action to avoid hitting the crash barrier so he swerved to the left, the cyclist did the same thing, hence the collision. This account was not supported by the forensic examination of the car and the cycle, which suggested that both car and cycle were travelling straight at the moment of impact, and the cycle was not hit at an angle. The jury had a plan of the locus in quo and, after retirement they asked for a tape measure. There being no objection from either side they were provided with a police surveyor's tape which was the only one available.

Maggs was convicted.

Write an opinion as to whether or not the compliance with the jury's request was irregular.
