

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2010

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 17, 2010)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate 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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

During the night of January 10, 2010, Dudley and Tom, armed with firearms, entered the dwelling house of Peter Dorman by breaking open a window.

Peter had retired to bed, having first secured all the doors and windows of his house. Dudley pointed his firearm at Peter, lying in bed, and demanded “all the money.” Tom stood watch at the door. Peter handed Dudley \$10,000.00 and then shouted “Thief.” Paul Dorman, his son, rushed in, held and disarmed Dudley as he was securing the money beneath his shirt. Tom then shot Paul in his right arm forcing him to release Dudley. Both intruders then ran from the house and disappeared into nearby bushes.

Two days after, both Dudley and Tom were apprehended by the police and subsequently identified by Peter and Paul at identification parades.

Draft the indictment to be presented in the Supreme Court/High Court. Give brief reasons for your draft.

QUESTION 2

The appellant Slick, employed as a driver and delivery man, was convicted of larceny of a quantity of car parts from the warehouse of his employer. He transported the goods from the warehouse to his home, after work late one evening, assisted by the warehouse handyman Price. Price gave to the police a cautioned statement admitting his involvement, saying that he innocently assisted Slick in unloading the goods at Slick’s home, thereby implicating Slick. The goods were found at the appellant Slick’s home.

At the joint trial of Slick and Price, the prosecution tendered Price's statement into evidence. This was the only evidence against Price. Counsel for the appellant Slick objected to its admission, submitting that his client's name should first be removed from the statement and replaced by the letter "A". The trial judge admitted the statement into evidence, unedited.

In his summing-up the trial judge warned the jury that the statement was not evidence against Slick. Both were convicted. Slick claims that he was prejudiced and that his trial was unfair. He wishes to appeal.

Advise Slick of his chances of success, giving your reasons.

QUESTION 3

Slash was indicted for murder. On his arraignment, the registrar read the indictment to him and asked him how he pleaded. He remained silent. The trial judge ordered that a jury be empanelled to try the issue of whether he was mute of malice or by visitation of God. The jury's verdict was that he was mute of malice. The trial judge ordered that a trial be held. Slash was tried and convicted of murder.

- (i) Advise counsel for Slash whether or not the trial judge was correct to do what he did, giving reasons.
- (ii) What is the applicable law and procedure, if the jury had found that he was mute by visitation of God?

QUESTION 4

Adam was charged with the offence of rape. After a preliminary inquiry/committal proceedings into the charge, the Resident Magistrate/Magistrate dismissed the case on the ground that no prima facie case had been made out. The Director of Public Prosecutions/Attorney General applied for and obtained a voluntary bill of indictment, charging Adam for the same offence of murder. A new indictment was issued by the order of a Judge of the Supreme/High Court and Adam was re-arrested for murder.

Counsel for Adam is of the view that the DPP/AG and the judge had no power to do what was done, for the reason that Adam had been discharged at the preliminary inquiry/committal proceedings. Furthermore, he argued that Adam had the right to be heard prior to the making of the order.

- (i) Advise counsel who wishes to challenge the order, giving reasons as to his chances of success.

 - (ii) Would your advice be different, if the DPP/AG had prepared the said indictment directly without any prior application to the Judge of the Supreme/High Court? Give reasons for your answer.
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QUESTION 5

A girl, 13 years old, is called as a witness for the prosecution at a trial charging the accused with the offence of wounding with intent. The clerk in the Supreme Court/High Court attempted to swear the witness. The presiding judge stopped the clerk and

proceeded to question the witness before she took the oath. The witness was then ordered to be sworn.

Advise whether or not the judge was correct to adopt this approach and in the presence of the jury, and state the law applicable to the determination of the issue.

QUESTION 6

The appellant Oldman was convicted of the offence of carnal abuse. On the conclusion of the summing-up, the jury retired to consider their verdict. After some deliberation they sent a message to the judge that they desired evidence on the question whether the clinic, where the offences were alleged to have been committed, would be empty or occupied at the material times. The trial judge brought back the jury and recalled a doctor, who had already given evidence, but only as to the physical condition of the girl concerned. The doctor stated that at the times when the offences were committed no one would be at the clinic, unless exceptionally. The jury retired again for a very short time, and then brought in a verdict of guilty.

Counsel for the appellant is of the view that the trial judge exercised his discretion wrongfully and seeks your advice. Advise him, giving reasons for your advice.

QUESTION 7

Rick and Shaw were racing their motor cars on the Mandela Highway. Rick, in attempting to overtake Shaw's motor car caused them to collide. Rick's vehicle overturned and injured a pedestrian. Shaw's vehicle was severely damaged. Rick was charged on two informations/complaints with the offences of dangerous driving and exceeding the speed limit, respectively. Shaw was also charged on two informations/complaints with exceeding the speed limit and failing to report an accident.

All these charges are triable summarily in a Magistrate's Court.

At the trial of Rick and Shaw in the Magistrate's Court, counsel for the prosecution applied to have all four informations/complaints tried together. Both counsel for the defence objected on the ground that the Magistrate has no jurisdiction so to do.

Advise the Magistrate, giving reasons.

QUESTION 8

Frank was convicted of the offence of robbery and sentenced in his absence. He had absconded during the trial. The trial judge had refused to discharge the jury and the trial continued in his absence. In addition, the trial judge also refused to allow counsel for Frank to participate any further in the trial. Frank was later apprehended.

Counsel contends that he had the right to exercise his discretion to continue in the trial. Frank now wishes to appeal and has applied to the court for an extension of time in which to appeal.

Advise Frank of his chances of success and give reasons for your advice.
