

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2014

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 12, 2014)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

FACTS FOR QUESTIONS 1 to 4

On August 15 last year Hank Jones and Ryan Smith were being deported to your jurisdiction by USA authorities. Whilst on the journey from Miami, Florida aboard a commercial aircraft, they discussed their future plans. Not wanting to alert the United States marshals escorting them, they conversed in dialect, the lilt of which befuddled the marshals.

Hank and Ryan agreed that there was money to be made in breaking into the homes of single returning residents given their solitude, advanced age and ample wealth. Hank, thinking himself the mastermind, would plan the operations whilst Ryan would purchase a gun from his acquaintances and recruit his brother, Yale Smith, a locksmith, to assist with the break-ins.

On August 22 last year three men broke into the home of Hilda Westwood, a septuagenarian returning resident, menaced her with a gun, and stole fifty thousand Canadian Dollars (CDN \$50 000) and an autographed and numbered picture of Frank Sinatra, the famous singer.

On the following day three men broke into the home of Jack Burns, an octogenarian returning resident. Whilst two of the men were stealing valuables from the upper bedrooms, Burns, a former prize-fighter, disarmed the third man and inflicted a serious beating on him. The uproar alerted the other two who returned downstairs, knocked Burns out, retrieved the firearm and left. Outside the house one of the men discharged a round from the firearm to disperse curious neighbours who had gathered. From Burns' house the men had taken forty thousand United States dollars (US\$40 000) from a safe in the master bedroom and a pearl necklace from the guest bedroom.

The two crimes received much media attention and were even picked up by the foreign press. The reports came to the attention of Mary-Joe Duke, a flight attendant on the flight that had returned Hank and Ryan to your jurisdiction. Mary-Joe had overheard Hank and Ryan's conversation and, due to her frequent trips to the Caribbean, had understood them. Mary-Joe immediately called the police in your territory and subsequently gave them a statement.

On September 1 last year, acting on Mary-Joe's tip, the police raided the homes of Hank, Ryan and Yale. At Hank's home they found the signed Sinatra picture. Hilda Westwood would later identify it as hers. At Ryan's home they found a firearm which the ballistic expert said was the same one that had been fired outside of Burns' house. Yale's DNA was a conclusive match to scrapings taken from Burns' nails and his face showed signs of a fairly recent beating. In addition the trio's fingerprint impressions were discovered at both crime scenes.

When confronted with the evidence and cautioned Hank said: "I am sorry. It was Ryan and Yale who forced me to do these things. I hope the old man is well." The other two remained silent.

Burns recovered from the blow suffered on August 23 last year.

QUESTION 1

- (a) Indict Hank, Ryan and Yale.
 - (b) Explain how you would have indicted if Burns had died.
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QUESTION 2

Before the trial started Yale escaped from custody. The court decided to hear the case in his absence and refused to permit his counsel, Peter Pirrip, to appear for Yale. Yale was convicted in his absence and sentenced to fifteen years' imprisonment. Pirrip attempted to file an appeal but this was rejected by the Court of Appeal because the notice was not signed by Yale and Yale was unlawfully at large. A year after his conviction, Yale was arrested. Yale desires to pursue an appeal.

- (a) Did the Court of Appeal act properly in refusing to accept the appeal initially filed by Pirrip?
 - (b) Can Yale now initiate an appeal? Explain your answer, setting out any relevant procedure.
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QUESTION 3

Ryan and Hank pleaded guilty and were sentenced to serve ten years on the firearm possession charge consecutive to their longer sentences on the other counts. The court, despite Hank's attorney's submissions that Hank was led to commit the offences, and without further enquiry, relied on the prosecutor's submissions (based on Mary Joe's statement) and treated Hank as the organizer of the crimes. Hank was sentenced to a term of imprisonment significantly longer than Ryan's.

Hank is displeased and wants to appeal.

- (a) Explain the approach the Court of Appeal ought to take on appeals of sentences; and
 - (b) Opine as to the Court of Appeal's likely ruling on this appeal.
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QUESTION 4

Assume for the purposes of this question that Ryan and Hank had pleaded not guilty.

- (a) Late in the trial the prosecution decided not to call Mary-Joe Duke, although her name appeared on the back of the indictment. The prosecutor further explained that, should the defence seek to call her, the state would not be paying the expense for her attendance from overseas. Hank's counsel, Louise Cooper, was desirous of cross-examining Mary-Joe. She asked the court to intervene to compel the prosecution to call Mary-Joe Duke on their case and to pay the travel expenses for her to attend as Hank is unable to pay these expenses.

Explain, with the aid of decided cases, what the court's ruling ought to be.

- (b) The prosecution's file includes a confidential report from the US marshals who had escorted Hank and Ryan. The report stated, among other things, that Hank and Ryan "discussed nothing of consequence" on the flight home.

The DPP/AG seeks your advice as to whether this report should be disclosed to the defence.

QUESTION 5

- (a) Harris was indicted on three counts, one each of – wounding with intent, larceny/theft of a motor car and receiving/handling the said motor car knowing it to have been stolen.

On his arraignment, Harris pleaded not guilty to the offence of wounding with intent but guilty to the offence of unlawful wounding. He also pleaded not guilty to the offence of larceny/theft but guilty to the offence of receiving/handling the said motor car knowing it to have been stolen.

The prosecutor refused to accept Harris' plea of guilty to the offences of unlawful wounding and receiving/handling. The trial thereafter proceeded on the counts of wounding with intent and larceny/theft of a motor car. The jury acquitted Harris on both counts. The trial judge nevertheless proceeded to sentence Harris in respect of the offences to which he had originally pleaded guilty (viz. unlawful wounding and receiving/ handling). Harris contends that the trial judge was wrong to sentence him as he did.

Opine as to the lawfulness of the sentences.

- (b) Mariah Cannon and Carey Stewart, who were unknown to each other, were travelling on a public omnibus from a rural district to the capital city. Five hundred yards from the city's border Constable Sullivan stops the bus and searches the passengers' bags. Cannon and Stewart's bags each contain a large amount of marijuana, the possession of which is a summary offence in your jurisdiction.

Explain whether or not Cannon and Stewart can be tried together.

QUESTION 6

Stephan Pushman was charged for a drug trafficking offence triable in the Resident Magistrate's/Magistrate's Court. After the first witness gave evidence, Pushman's counsel asked the prosecutor whether any covert intelligence source or device was employed to gather evidence.

The prosecutor refused to answer and asked the Resident Magistrate/Magistrate to hear from the prosecution ex parte in chambers on the issue. The Resident Magistrate/Magistrate refused

and directed the prosecution to answer fulsomely. The prosecutor pleaded for reconsideration pointing out that the answer would concern issues of national security. The Resident Magistrate/Magistrate was unmoved. The prosecutor asked for an adjournment to “prepare a full answer” and an hour long recess was permitted.

On return to court the prosecutor explained that the disclosure would be made on the following day.

On the next day the prosecutor entered a *nolle prosequi* and Pushman was told that he was free to go. The disclosure was not made.

Whilst Pushman was in the courtyard thanking his family and his Creator for his “freedom”, Inspector Brown arrested and charged him for the same drug trafficking offence. Later that day Pushman was brought before a different Resident Magistrate/Magistrate and granted bail.

- (a) Explain what application(s) Pushman’s counsel may now make.
- (b) Comment on the Resident Magistrate’s/Magistrate’s treatment of the issues surrounding defence counsel’s request for disclosure.

QUESTION 7

Jimmy Tango was indicted in the Supreme/High Court for rape. After the jury had retired for two hours and fifteen minutes to consider their verdict, they handed a note to the jury officer

for the attention of the judge. The note read that they had arrived at a majority verdict of not guilty. The judge had not given the jury a majority direction. Having read the note, the judge instructed the jury officer to tell the jury that they should continue their deliberations until they had reached a unanimous verdict.

Five minutes later the jury sent a second note saying that they would like further explanation of something the judge had said in his summation. The judge directed the jury officer to advise the jury that: "He could only give a further explanation on legal issues as the facts are for them". Within five minutes the jury returned a unanimous verdict of guilty.

The next day three jurors attended court and revealed that they had not understood the word "unanimous" and were not in agreement with the verdict.

The judge nonetheless proceeded to sentence.

The communications were not made public, and counsel for the defendant was not made aware of them until after the sentence.

Comment, with the aid of decided cases, on:

- (a) the judge's treatment of the communications during the deliberations; and
- (b) whether an appeal may be properly grounded on the three jurors' post-verdict revelation.

QUESTION 8

- (a) Robin Rooney was arrested and charged with possession of a large amount of cocaine. The police have information that Rooney is planning to leave the country as soon as he gets bail. The informant has refused to give a statement.

You appear for the prosecution and have been asked to opine as to whether this information may properly be used in objection to a bail application.

- (b) Daley was charged with manslaughter. It is alleged that he recklessly drove his motor car and caused the death of Sweeney Sondheim. One of the jurors sworn to try the case was Oscar Porter. Daley was convicted. After his conviction it is discovered that Porter was, three months earlier, convicted for rape and was also Sondheim's uncle.

Explain whether these discoveries may be the basis for a viable ground of appeal.

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