

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2012

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 14, 2012)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

The following legislation and facts apply to all questions. Additional facts given with individual questions must not be transposed to other questions.

THE LEGISLATION

Assume that the ***Exterminators Control Act*** is part of the laws of your jurisdiction and that the statute provides so far as is relevant:

“4. (1) No person shall:

(a) advertise, offer or provide the service of pest extermination without a licence for that purpose issued pursuant to section 2 above, or

(b) use, sell or possess, for the purpose of pest extermination any chemical, compound or solution listed in the Schedule.

(2) Any person who breaches the provisions of this section commits an offence and shall be liable on summary conviction before a Resident Magistrate/Magistrate to imprisonment for a term not exceeding twelve months.

5. (1) Any person who negligently or recklessly:

(a) provides the service of pest extermination, or

(b) fails to safely keep any chemical, compound or solution and causes injury to any person or damage to property shall be guilty of an offence and be liable on conviction on indictment to imprisonment for five years or to a fine of one hundred thousand dollars.

(2) Where death is caused by a person negligently or recklessly:

(a) providing the service of pest extermination, or

(b) *failing to safely keep any chemical, compound or solution that person shall be guilty of an offence and be liable on conviction on indictment to imprisonment for ten years or to a fine of five hundred thousand dollars.*

(3) *Upon the trial of a person who is indicted for manslaughter in connection with pest extermination it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under section 5 to find him guilty of that offence.*

...

SCHEDULE (SECTION 4(1)(B))

Chlorinated Hydrocarbon Standbys

DDT

Methyl Iodide

Pyrethrins

Pyrethroids”

THE FACTS

Philemon Jones, Milton Campbell and Sally Heath on August 1 last year opened PMS Exterminators and advertised their partnership as exterminators of insects, pests and vermin. Their slogan was: “We make pests miserable”. They were unlicensed.

On March 1, Jones and Campbell took two contracts that involved extermination by fumigation at two apartments that were, coincidentally, on the same building. Campbell used pyrethrins

and the fumes escaped and killed two octogenarians, Agnes Caine and Agatha Bromhead, who resided in a neighbouring apartment. Jones employed methyl iodide and this caused one of the homeowner's children, Shaka Kop and Spion Kop, to suffer nausea, migraines and hives.

Heath was a silent partner and at all material times resided in a hospice in Orlando, Florida, USA. She suffers from early stage of Alzheimer's disease which had reduced her short term memory so severely that she would forget a conversation an hour after having been engaged in it.

The police seized Jones' and Campbell's fumigation equipment. The Government Chemist, Sebastian Lee, reported that the equipment tested positive for traces of the aforementioned prohibited chemicals.

Dr. Roy Campbell conducted the autopsy on Caine and Bromhead and an examination of the Kop boys and opined that the deaths and ailments were caused by the misuse of these chemicals.

The police charged Campbell for manslaughter and for contravening sections 4 and 5 of the Act.

Jones was charged for breaching sections 4 and 5; and Heath for breaching section 4.

QUESTION 1

- (a) Indict Philemon Jones and Milton Campbell.
- (b) Describe and explain the considerations for a joint trial of Jones, Campbell and Heath for contravention of section 4.

QUESTION 2

Heath, Jones and Campbell were convicted on an information/complaint that charged that they: “sold, possessed or used prohibited chemicals for the purpose of pest extermination contrary to section 4 of the Exterminators Control Act.”

Lead counsel is considering an appeal and has asked you to:

- (a) examine critically the form of the charge;
 - (b) advise as to whether there is any good basis for an appeal; and
 - (c) describe the necessary procedural steps to bring an appeal.
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QUESTION 3

- (a) On February 1 this year Milton Campbell pleaded guilty to breaching section 4 with regard to the use of the scheduled chemicals and was fined. One week later the prosecution filed an indictment against him for breach of section 5. At the start of the trial, Campbell’s defence counsel pleads *autrefois convict*. You appear for the prosecution and the Judge asks you to submit a written argument in response. Please do so.
 - (b) Would your answer to the preceding be different if Campbell had been sentenced without actually pleading guilty? Give reasons for your answer.
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QUESTION 4

- (a) You appear for Heath. Given her medical condition, explain with the aid of legislation and/or decided cases the approach you would take at her trial.
- (b) Campbell was absent on the day set down for his trial to start but his counsel could give no explanation. The Resident Magistrate/Magistrate adjourned the case for one week but Campbell still did not appear. Explain with the aid of decided cases what the Resident Magistrate/Magistrate and defence counsel may now do.
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QUESTION 5

- (a) Milton Campbell was convicted for breach of section 5 but Sebastian Lee, the Government Chemist, had failed to advise the prosecutor that the test he conducted was shown to give false positives in ten percent of cases. You have discovered this in an academic paper previously delivered by Sebastian Lee and seek to raise the issue on appeal. Discuss the possible issues, applicable procedures and likely ruling of the Court of Appeal.
- (b) USA prosecutors are considering an extradition request for Heath from your jurisdiction. They seek your opinion as to whether, given the fact that Heath was never in your jurisdiction, your courts will have jurisdiction to try her.
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QUESTION 6

The prosecution having called/tendered their evidence at the preliminary inquiry/paper committal for Campbell, the defence expressed their desire to make submissions and call/tender evidence. The Resident Magistrate/Magistrate refused the request, reasoning that a *prima facie* case had clearly been made out. The depositions/statements given/tendered at the preliminary inquiry/paper committal were not signed but this was not noticed at the preliminary inquiry/paper committal.

Campbell is now indicted and the matter is set for trial. His defence raises both of the aforementioned issues from the preliminary inquiry/paper committal and asks that the committal and indictment be quashed. You appear for the prosecution and must respond. Please make your response in writing.

QUESTION 7

At Campbell's trial on an indictment for manslaughter, the judge's summation to the jury ended with these final directions:

"The only verdict open to you is guilty or not guilty to manslaughter.

Endeavour to reach a unanimous verdict, if you can, but if you cannot a time will arise when I can accept a majority verdict. That time has not yet arisen as I will wait two hours before directing you as to such a verdict. You may retire now and consider your verdict."

The jury retired to deliberate. During the deliberation juror number four, using her mobile telephone, posted on her *Facebook* page:

"....tired of this case I want to go home".

The foreman realised what juror number four had done and informed the bailiff who advised the judge in chambers. The judge, without advising counsel or the defendant, immediately ordered the bailiff to confiscate the telephone.

The jury returned after 90 minutes of deliberation. When the foreman was asked for the verdict the following transpired:

Registrar: " Mr. Foreman how say you; is the defendant guilty or not guilty of the offence of manslaughter?"

Foreman: "Not Guilty."

Judge: "What did you say?"

Foreman: "I meant to say guilty; the verdict of the jury is guilty!"

Registrar: "You say that the defendant is guilty of manslaughter is that the verdict of you all?"

Foreman: "Yes" (other jurors nod their heads).

Comment critically on:

- (a) the judge's final directions;
- (b) his decision on and handling of the report of juror number four's *Facebook* post; and
- (c) the circumstances of the rendering of the verdict.

QUESTION 8

- (a) Heath has been extradited to your jurisdiction. Her counsel has made a bail application pointing out her medical condition, that she has no convictions and has business and familial ties to the local community. Discuss how the Resident Magistrate/Magistrate should approach the application.
- (b) Prior to the start of Campbell's trial his counsel applied for government assistance to retain an independent chemist to review the work of the Government Chemist. Counsel explained that Campbell could not afford to do so himself. The trial judge has reserved her decision and asks you, her judicial clerk, to prepare an opinion on the matter.

END OF PAPER