

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTAL EXAMINATIONS, 1999**

CRIMINAL PRACTICE AND PROCEDURE

(Thursday, August 12, 1999)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

On January 10, 1999, Mr. Jewell missed from his store three expensive rings. The police were called in. On January 24, 1999, the police acting on information received, obtained a search warrant and went to the home of Furtum.

Furtum and his girlfriend, Miss Bella, were seen in a room. The warrant was read to them. Thereafter, the police proceeded to search the room. In a drawer the police found two gold rings. Miss. Bella had a gold ring on her finger. She told the police that the ring was given to her by Furtum.

Furtum was questioned about the rings. He told the police he bought them whilst on King Street from a man whom he did not know. When asked how much he paid for them he refused to answer.

All three rings were positively identified by Mr. Jewell as the rings he had missed from his store. Furtum and Miss Bella were arrested and charged.

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

QUESTION 2

Mano is jointly charged with Benjy for murder. The prosecution's case is that both accused attacked the deceased in the course of an argument at a bar which they frequented.

On arraignment, Benjy pleads "not guilty of murder but guilty of manslaughter". The plea to the lesser offence was not accepted. Mano remained silent when pleaded. The judge directed that a plea of not guilty be entered.

The jury was empanelled and the accused persons put in their charge. Part of the prosecution's case was founded on an alleged confessional statement by Mano. Counsel for Mano objected to the statement on the ground that it was not made voluntarily. When the judge was about to send the jury out of court to embark on a *voir dire*, Mano's counsel told the court that he wanted the jury to remain in court. The *voir dire* was accordingly held in the presence of the jury and the statement was later admitted by the judge.

At the end of the prosecution's case, no case submissions were made by counsel for Mano and Benjy, who insisted that the jury be present to hear their submissions. The jurors thus remained in court for the no case submissions, which were overruled. The defence was thereafter called upon.

The jury found Benjy not guilty of murder. When asked whether they found the accused Mano guilty or not guilty of murder, the foreman said "not guilty". The judge then said to Mano, "You are free to go". At this point, some jurors shouted out. "Guilty of manslaughter." The judge then asked the foreman what's the verdict? The foreman replied "Guilty of manslaughter".

Counsel for Benjy asked the judge to dismiss his client. The judge replied "No, he pleaded guilty to manslaughter on arraignment, I am going to deal with that now."

Thereafter, the usual procedure was followed and Mano and Benjy were sentenced.

Mano and Benjy would like to appeal.

Advise them.

QUESTION 3

Mena was charged with a summary offence. After his case had been adjourned on a number of occasions, it was set down for trial, the justices indicating that if he failed to attend, they would proceed in his absence. He did not attend but provided a medical certificate and a doctor's letter stating that he was suffering from acute anxiety and depression and was not fit to attend court. The justices refused to adjourn and proceeded to try and convict him.

Mena wants to know whether or not he has a good ground of appeal and the steps he should take to pursue an appeal.

Advise him.

QUESTION 4

Peter Housen was charged with an offence under the Road Traffic Act.

The first Information was defective in that it charged an offence under section X of the Act but the particulars of offence combined sections X and Y of the Act.

An alternative Information was substituted before the magistrate at a later date. An earlier plea of not guilty had been taken on the first information and similar plea was entered on the second.

The prosecutor elected to proceed on the second Information and offered no evidence on the first which was accordingly dismissed.

Counsel for the accused then submitted that the second Information should also be dismissed on the *autre fois acquit* principle since the charges were the same or substantially the same. Counsel for the prosecution agreed that it was not open to the magistrate to dismiss the Information before evidence had been heard in relation to either Information.

Advise the magistrate.

QUESTION 5

- (a) Sonny is charged for dangerous driving. At his trial the Crown closes its case without proving the identity of the driver. Defence counsel makes a no-case submission. The prosecution applies to reopen its case.

The magistrate seeks advice.

Advise him.

- (b) On the trial of Husky for rape, the jury on their retirement requested and was given an almanac which indicated that there was a full moon the night of the alleged incident. The almanac was not an exhibit in the case. Husky was convicted.

Husky desires to know if there was any irregularity.

Advise him.

QUESTION 6

Jack, on trial for murder, changed his plea to one of guilty of manslaughter. His plea was accepted by the trial judge and the prosecution.

The judge directed the jury to find Jack not guilty of murder but guilty of manslaughter. The jury, however, had their own ideas and made it clear they did not consider Jack guilty of either crime. The judge sent them back to their room to consider. In spite of being sent back to their room three times, the jury refused to find Jack guilty of the admitted charge.

The jury came back into court and one of them told the judge:

“The only reason he has pleaded guilty to manslaughter, is out of remorse. If you send this man to prison it will ruin his family.”

Finally, the judge discharged them from giving any verdict and treated the case as a straightforward plea of guilty, awarding Jack a two-year suspended sentence.

Write an opinion as to whether or not the course taken by the judge was proper.

QUESTION 7

An Act provides that

“parking a vehicle elsewhere than in a place provided for that purpose or otherwise than in a manner required by an authorised officer is prohibited.”

The Act further provides that anyone who contravenes any such prohibition shall be guilty of an offence, punishable summarily.

An Information charged Dormo that he “on January 10, 1999, in the parish of St. Catherine unlawfully parked a motor vehicle elsewhere than in a place provided for that purpose and otherwise than in a manner required by an authorised officer”.

Write an opinion as to whether or not the charge is bad for duplicity.

QUESTION 8

On the trial of Joseph in the Supreme/High Court for robbery, the case for the prosecution rested substantially on the evidence of Police Constable Dunn, who had picked out Joseph at an identification parade. The constable said in his evidence that the victim of the offence had not been present at the parade, but that he had been at the police station on the evening of the parade, and probably for the purpose of taking part in it. The victim of the offence gave evidence that he had taken part in the parade but had failed to identify the accused.

During the opening speech of counsel for the defence, a suggestion which had not been made in cross-examination was made for the first time, namely, that at the parade the constable had seen a man whom he mistook for the victim of the offence. The judge granted the prosecution leave to recall the constable, who gave evidence relating to the times of events on the evening in question.

Joseph was eventually convicted. He now wishes to appeal against conviction on the ground that the judge erred in permitting the recalling of Constable Dunn.

He wishes to know whether he needs leave to appeal and whether he is likely to succeed on appeal.

Advise him.
