

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2013

CRIMINAL PRACTICE AND PROCEDURE

(WEDNESDAY, AUGUST 14, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

FACTS FOR QUESTIONS 1, 2, 3 AND 4

Carmen Jackson had been separated from her policeman husband, Lothar Jackson, for two (2) years when she went missing. Carmen was a writer of housekeeping books but lived alone without any near neighbours. She was last seen at church a dozen years ago on the anniversary of Emancipation Day (August 1).

Three (3) years after her disappearance, Lothar moved into the house with his girlfriend, Luscious Jones. They live a happy life planting a beautiful garden of bougainvilleas and orchids in the front yard. They are both prominent members of the community with Lothar rising to the rank of Superintendent and Luscious running a very popular travel service.

December of last year witnessed some important developments in the case. On the 5th, the contractors working on a new highway to make traffic less congested in the capital unearthed human skeletal remains and contacted Inspector Barnaby Hemlock, who commenced an investigation.

In the following week, pathologist, Dr. Clifford Rance, conducted a post-mortem examination and removed a bullet from the skull cavity and a scarf forming a ligature around the bony remains of the neck. Dr. Rance opined that death was caused by shooting and/or ligature strangulation. Dr. Rance stated that it would be impossible to say whether the shot was fired before the strangulation.

Next the teeth were examined against a database of missing persons and Dr. Mucho Paine, a dentist, matched them to Carmen Jackson's dental records. Peter Partridge, the forensic scientist, also matched DNA from the skeleton to Carmen Jackson.

In the following week Biden Spector, the ballistics expert, matches the bullet to the service revolver issued to Lothar Jackson for the last fifteen (15) years.

Inspector Hemlock examined the scarf's label and noted that it was a Versace Limited Edition with a unique code number #3265/00. Simon Stainrod of Versace's International Shipping department advised Hemlock that the particular scarf was bought by Luscious Jones.

In the week before Christmas, Lothar and Luscious are charged on separate informations/complaints for Carmen's murder.

QUESTION 1

Indict Lothar and Luscious. Explain your draft.

QUESTION 2

On Lothar's and Luscious' first appearance before a Magistrate/Resident Magistrate, the facts are outlined by the prosecutor and, given the seriousness of the offence, bail is opposed. Counsel for the defendants responded by describing proof of cause of death as an "insurmountable hurdle" and noted their clients' high calibre. The Magistrate/Resident Magistrate is minded to refuse bail to both and requests that you, her legal clerk, draft written reasons.

QUESTION 3

You are the legal clerk to a judge on Assizes/Circuit and your advice is sought on the following:

- (a) Luscious applied for public assistance and the authorities assigned Mignott Homer, a criminal lawyer of 15 years experience. Homer asked the authorities to pay for a defence expert to advise on the autopsy, dental and DNA reports but the request was refused for lack of funds. Homer asks the judge to direct the State to provide the funds.
- (b) The prosecution retained Carson Edwards, QC and Lothar's counsel is Nicole Porteous, QC. Luscious, who had sought public assistance to retain counsel, fired Homer and insisted that: *"My legal aid lawyer must be a QC too!"* The legal aid authorities have refused this request but Luscious is adamant. The judge wants to proceed regardless.
- (c) On the morning of the trial for the closing speeches Lothar, who had been on bail throughout, does not show. No reasons are advanced. The judge wants to proceed.

QUESTION 4

- (a) When the jury in charge of Lothar's murder case was asked for its verdict, the foreman responded: "Guilty of murder, not guilty of manslaughter". Manslaughter had not been left for the jury's consideration. What should the judge do?
- (b) Luscious is acquitted on the murder charge. You are employed in the prosecutor's office and have been asked to opine as to whether a charge of conspiracy to murder against Luscious may now be properly brought.

QUESTION 5

Lucky Pasteur is being tried for a capital offence. Just before the jury was selected, the prosecutor announced in open court that the Crown/State would be seeking the death penalty. The only previous indication of this came when the DPP/AG had made a similar announcement on a radio show shortly after Lucky's arrest.

- (i) Lucky's counsel seeks your advice as to how, in the event that his client is convicted, the issue as to the imposition of the death penalty ought to be resolved.
 - (ii) Would your answer be different if the prosecutor's indication had been the subject of a letter to the defendant and copied to the Supreme/High Court Registrar prior to committal?
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QUESTION 6

Leroy Brown was convicted on a capital charge and sentenced to death. Three months after, he has done nothing to commence an appeal. He complains that his trial was unfair because the trial judge had failed to discharge a juror who had, without permission, left the jury room during deliberations to turn up his car window.

- (i) Discuss the merits of Leroy's complaint.
 - (ii) You are asked to opine as to whether, and if so, how an appeal may be brought.
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QUESTION 7

Besbo, the local race car hero, was speeding along the highway when he was pulled over by the police. The police searched his car and examined his documents. The search revealed a packet of marijuana. He was charged with exceeding the speed limit and possession of marijuana. Assume both offences are triable before the Magistrate's/Resident Magistrate's court in your jurisdiction. The trial had commenced in the absence of Besbo's attorney-at-law who, on arrival, was advised by his client that he was not pleaded to the informations/complaints. Besbo's attorney-at-law examined the endorsements on the informations/complaints. No plea was recorded on them and there was no reference to the statutes creating the offences. The first witness for the prosecution had completed his examination-in-chief. Before commencing cross-examination of that witness, Besbo's attorney-at-law raised the issue of whether the trial was a nullity. The prosecutor submitted that the informations/complaints were fine as they were, and that Besbo could still be arraigned and the trial resumed.

The Magistrate/Resident Magistrate has adjourned to consider the submission and has asked you, her legal clerk, for an opinion as to what orders she should make.

QUESTION 8

Gregory Jones was convicted on a summary charge of marijuana possession and sentenced to twelve (12) months imprisonment. He was tried, without counsel, after two adjournments to permit him to retain counsel. Jones did not, at any stage, receive a copy of the Crown witnesses' statements. However, on the first day that Jones was brought before the court, the prosecutor had summarised the evidence.

At the trial the prosecution had closed its case without proving that the substance allegedly recovered from Jones was marijuana. Jones elected not to give evidence but called his pastor who spoke to his good character. The prosecution was granted permission to reopen its case to tender the forensic certificate proving that the substance was marijuana. Thereafter Jones sought to give evidence but the Resident Magistrate/Magistrate refused to permit it. Jones was not permitted to address the court prior to sentence. He was granted bail pending appeal.

- (i) Draft grounds of appeal.

- (ii) Through no fault of Jones, the appeal has taken five years to be heard. How ought this delay influence the determination of the appeal?

END OF PAPER