

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2014

CRIMINAL PRACTICE AND PROCEDURE

( , AUGUST , 2014)

**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.

## **QUESTION 1**

The depositions in an incest case reveal that whilst the virtual complainant (Polly Parsons) cannot recall the exact dates of the sexual intercourse, she can say that there were three incidents with her father (Reginald Parsons) at their home in the capital during the first school term of her first year in secondary school. Her first year was 2007.

Draft the indictment.

---

## **QUESTION 2**

Warren Jeffs was charged summarily on an information/complaint for the offence of “allowing his premises to be used for smoking cannabis and dealing in cannabis contrary to section 4 of the Dangerous Substances Act”. The maximum penalty, on conviction before a Resident Magistrate/Magistrate, is three years imprisonment or a fine of three hundred thousand dollars.

Constables Able and Cairns entered Warren’s business premises and saw several persons, including Warren, smoking cannabis. They also saw persons purchasing cannabis from Warren. Warren was charged and given station bail.

Warren’s first appearance was before Resident Magistrate/Magistrate Mal Hodge. Warren was unrepresented and when initially arraigned he pleaded not guilty. Mr. Hodge immediately berated him for wasting the court’s time and advised that he may not “enjoy bail any further”. Warren quickly indicated that he wished to plead guilty and was sentenced to ninety days imprisonment.

The next day Warren filed a notice of appeal. Within a week of filing the notice, Warren was told by a correctional officer that his sentence would begin to run after his appeal was dismissed. Warren immediately wrote to the court and abandoned his appeal. Senior counsel has been contacted by Warren's family and you are requested to explain:

- (i) whether Warren may yet pursue his appeal; and
  - (ii) assuming that he may, the likely result of the appeal.
- 

### **QUESTION 3**

- (a) The defendant's first appearance in court for possession of marijuana was on August 16, 2010. On that day there were no witnesses present. The prosecutor had mistakenly listed and announced the case as being for trial. The defendant pleaded not guilty and the Resident Magistrate/Magistrate dismissed the matter for "want of prosecution".

On the following day the Resident Magistrate/Magistrate, having been told of the error, ordered that the same charge be laid on a new information/complaint and a summons issued.

Opine as to the validity of the new information/complaint.

- (b) Tippa Henry, a chartered accountant, was convicted in the Resident Magistrate's/Magistrate's Court and sentenced to six months imprisonment. Her counsel secured bail pending appeal.

The hearing of the appeal was slowed considerably as the Resident Magistrate/Magistrate failed to provide written reasons for the judgment. After four years, the Resident Magistrate/Magistrate passed away without publishing the reasons. However, the notes of evidence are available. Tippa has been unable to find work whilst her appeal has been pending.

Explain whether:

- (i) the Court of Appeal will be able to hear an appeal against conviction without the reasons for that decision; and
- (ii) the delay in the hearing of the appeal ought to have any bearing on the resolution of the appeal.

---

#### **QUESTION 4**

At Ricardo Arnaz's trial for rape, the prosecution applied for the complainant to give her evidence behind a screen to prevent Arnaz seeing her. The defence called for a *voir dire* to determine whether "such an exceptional course" was prudent. The judge decided not to have a *voir dire* and ruled in favour of the prosecution's request, holding that screening a witness was not "exceptional" and a witness's comfort must be paramount.

Arnaz became enraged and unruly. The Judge sent him to the cells and continued the trial in his absence. Arnaz's counsel pleaded for an adjournment so that Arnaz might regain his composure, and disclosed that Arnaz had intended to give evidence in his own defence. The judge refused and Arnaz was convicted.

Advise on the prospects of a proposed appeal.

---

### **QUESTION 5**

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.

- (i) Campbell is now indicted and the matter is set for trial. His defence raises the aforementioned issue 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.
  
  - (ii) Explain whether your answer would be different if Campbell was convicted and the issue was first raised on Campbell's appeal?
- 

### **QUESTION 6**

David Edgewild was convicted for the offence of rape and sentenced to fifteen years imprisonment. At the trial he had been represented by Marco Vanns, a very experienced criminal advocate, but the family has approached you in the hope that you will conduct his appeal.

On examination of the trial transcript you discover that on arraignment Edgewild first answered, "Rape who?" When, on the judge's instructions, the charge was repeated, Edgewild had responded with a slew of invectives and expletives. The judge ordered Edgewild to be silent and directed that a verdict of not guilty be entered.

The trial proceeded but Edgewild did not testify on his own case.

You attended on Edgewild at the prison and encountered great difficulty in conversing with him. This was due to his inability to understand unless the issues are significantly simplified and often repeated. Edgewild's family physician advised that Edgewild suffers from developmental problems, is highly suggestible, and has a mental age of ten years.

Vanns confirms that these matters were not raised at trial but explains that he had noticed Edgewild's suggestibility and that was the reason he did not call Edgewild as a witness.

- (i) Was the judge correct in having a plea of not guilty entered? Give reasons.
- (ii) Explain whether the Court of Appeal is likely to reverse the conviction because of Edgewild's mental incapacity.

---

## **QUESTION 7**

Jan Fricke was charged with manslaughter arising from a motor vehicle collision. The jury had completed the second hour of their deliberation when their foreman communicated two requests to the judge. First, the jury sought magnifying glasses and measuring tape to examine the car that Fricke had been driving during the collision. The car had been exhibited in the case

and was parked in the courtyard. Secondly, the jury wanted to visit the scene of the collision. Pictures of the scene had been exhibited but there had been no visit to the scene during the trial. The defence and prosecution have no objection to facilitating the jury's requests.

Explain, with the aid of decided cases, how the judge ought to rule.

---

### **QUESTION 8**

- (a) Despite your comprehensive bail applications, your client, Jones, was denied bail by Fancy, J at the first two Circuit Court/Assizes appearances. Six months later you are about to make a third application before Repole, J but the judge comments, "*Ought I to hear this? I do not sit as a Court of Appeal for my brother judge*".

Please reduce to writing your submissions in response.

- (b) James Johnson and Jack Brown were racing their motor cars on the highway. James, in attempting to overtake the vehicle driven by Jack, caused them to collide. James' vehicle overturned and injured a pedestrian. Jack's vehicle was severely damaged. James was charged on two informations/complaints with dangerous driving and driving a motor vehicle at a speed in excess of the speed limit. Jack was also charged on two informations/complaints with exceeding the speed limit and with failing to report an accident. (Assume that all these charges are triable summarily in a Resident Magistrate's/Magistrate's Court.)

At the trial of James and Jack, counsel for the prosecution seeks leave to have all four informations/complaints tried together but counsel for the defence objects on the ground that the magistrate has no jurisdiction so to do.

How should the magistrate decide? Give reasons for your answer.

---

**END OF PAPER**