

C5 Supp.

FOR REFERENCE ONLY

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

NORMAN MANLEY LAW SCHOOL LIBRARY  
COUNCIL OF LEGAL EDUCATION  
MONA, KINGSTON, 7. JAMAICA

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATION, 1991

CRIMINAL PRACTICE AND PROCEDURE  
(Wednesday, August 14, 1991)

Instructions to Students:

- A] Time: 3 1/2 Hours.
- B] Answer FIVE questions.
- C] In answering any question, a student 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.

QUESTION 1

Cunning struck up an acquaintance with Gretel whom he met at a bus stop. He invited Gretel to his home on the pretext that he would obtain or could obtain for her a position as an office maid, and that at his house she would meet her prospective employer.

She went along with him and he took her into a room on the premises. They were joined by one Flash. Cunning told Gretel to follow Flash into an adjoining room. Before they left, Flash gave Cunning \$20 saying, "I will give you the balance later."

In the adjoining room Flash pointed to a bed and said to Gretel "get on it". She refused. He took out a knife and placed it on a table in the room. Gretel panicked. Flash threw her on the bed and proceeded to have sexual intercourse with her.

Cunning and Flash were subsequently arrested and charged.

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

---

QUESTION 2

On October 10, 1990, an information was laid against P for careless driving arising out of a motor vehicle accident which occurred on August 17, 1990.

On November 1, 1990, a summons was issued against P. He appeared in court, on November 8, in obedience to the summons. He pleaded not guilty and the case was adjourned to November 13, for trial.

On November 13, the prosecution was not ready and applied for an adjournment. P's counsel opposed the application. The judge of the court after hearing submissions on the application refused it. However, the prosecution's witness was absent and so the prosecution had no evidence to put before the court. The information was therefore dismissed.

Fresh proceedings were commenced by the prosecution on the basis that there had been no trial on the merits.

P now wishes to know whether the plea of autrefois acquit will avail him.

Advise him.

---

QUESTION 3

N was tried before a judge and jury on an indictment which charged him with murder. The indictment contained no other count. The jury returned a verdict of not guilty of this offence of murder, but despite subsequent lengthy deliberations were unable to agree on a verdict of manslaughter and were accordingly discharged by the learned trial judge. Counsel for the prosecution thereupon applied to the judge for an order directing a retrial of the accused on the issue of manslaughter.

After hearing arguments, the trial judge granted the application and adjourned the case for trial at the next sitting of the court on the issue of manslaughter.

N now seeks your advice as to whether or not the plea of autrefois acquit will avail him.

Advise him.

---

QUESTION 4

Write notes on THREE of the following:

- a) Either -
    - (i) procedure at a preliminary enquiry; or
    - (ii) the different ways in which an indictment may lawfully be preferred at a Supreme/High Court;
  - (b) challenge of jurors for cause;
  - (c) summary trial;
  - (d) the procedure where an accused on arraignment stands mute.
-

QUESTION 5

A, B, C and D were driving their motor cycles abreast along a public road and by riding in that formation had been an annoyance to other road users.

They entered together a 30 m.p.h. speed limit zone each cyclist travelling at 50 m.p.h. D collided with a pedestrian who was knocked to the ground.

Four separate informations/charges were laid charging each of them with riding at a speed exceeding the speed limit. A fifth information/charge was preferred against D for dangerous riding

All these offences are triable summarily before a magistrate. At their trial in the Magistrate's Court the prosecution seeks leave to try all five informations/charges together. Counsel for the defence objects contending that the magistrate has no jurisdiction so to do.

How should the magistrate decide?

---

QUESTION 6

- a) Outline the circumstances in and the procedure by which a jury is selected at the trial of an accused.
- b) In what circumstances, by what authority and with what effect on the trial of an accused may the trial judge:
- i) allow the jury to separate;
  - ii) discharge a juror temporarily or permanently;
  - iii) discharge the entire panel of jurors selected to try an accused?

---

QUESTION 7

On a charge of wounding with intent L. pleaded not guilty to wounding with intent but guilty to unlawful wounding. The prosecution did not accept the plea and the trial proceeded with the count being read to the jury.

The prosecution did not call evidence of L's original plea of guilty to the lesser offence.

However, the judge in his summing up told the jury that I had pleaded guilty to the lesser offence and directed them to find the accused guilty of the lesser offence if they were of the view that he was not guilty of the greater.

The jury found I not guilty of wounding with intent but guilty of unlawful wounding. I was sentenced to a term of imprisonment. He now wishes to appeal and seeks your advice as to his chances of success.

Advise him.

---

#### QUESTION 8

At the conclusion of the trial judge's summing up at the trial of John Wynne for larceny, the jury retired to consider their verdict. Within 20 minutes they returned to the court. When asked whether they had arrived at a verdict to which they were all agreed in respect of the accused, the foreman replied "no".

The trial judge sent the jury back to further consider their verdict with a view to their arriving at a verdict in respect of which they were all agreed. The jury returned within 15 minutes



thereafter. The trial judge again asked them whether they had arrived at a verdict in respect of which they were all agreed as regards the accused. The foreman replied stating that there was no hope or indication that they would ever arrive at such a verdict.

The trial judge then asked the foreman whether they were agreed upon a majority verdict whereupon he answered, "yes, five are in favour of guilty and two are in favour of not guilty". The trial judge accepted the guilty verdict and convicted and sentenced Wynne to imprisonment for five years.

Wynne is dissatisfied with the conviction and sentence and seeks your advice.

Advise him.

---