

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1995

CRIMINAL PRACTICE AND PROCEDURE

Thursday, August 10, 1995

Instructions to Students:

- (a) Time 3½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

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MONA, KINGSTON, 7. JAMAICA

QUESTION 1

Hassan and Kotash attacked Hammel with knives and wounded him. Hammel ran and locked himself in his office. Hassan and Kotash threatened to kick down the door if Hammel did not come out.

Hassan went to the back of the building. Without the knowledge of Kotash, he climbed through an open window and entered a room adjacent to Hammel's office. He quietly crept up behind Hammel and stabbed him in the back, thereby inflicting a serious injury.

Hassan and Kotash were arrested and charged in respect of the injuries inflicted to Hammel.

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

QUESTION 2

Rod, on arraignment, entered a plea of autrefois acquit. A jury was empanelled after Rod had exercised his right of peremptory challenge. The plea of autrefois acquit was rejected. Counsel for Rod then submitted that for the actual trial of the charges, Rod was entitled to an additional right of challenge of the jury, or alternatively, to have a fresh jury empanelled.

The learned trial judge overruled this submission and the trial proceeded before the same jury. Rod was convicted and sentenced.

Rod wishes to appeal and wants to know if the trial judge erred in overruling counsel's submission.

Advise him.

QUESTION 3

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.

QUESTION 4

Johnson appeared before a magistrate on a charge triable on indictment only. At the close of the preliminary enquiry the magistrate was satisfied that although the evidence adduced did not establish a prima facie case of the offence charged, nevertheless

it established beyond a reasonable doubt a lesser offence triable by the magistrate.

Counsel for the accused submitted that the magistrate ought at that stage to convict and sentence Johnson in respect of the lesser offence. Counsel for the prosecution contended otherwise, submitting that the magistrate had no alternative but to commit Johnson for trial on the lesser offence. The magistrate agreed with Counsel for the prosecution and committed Johnson for trial on the lesser offence.

Write an opinion as regards the merits of the contention of each party and indicate whether or not the magistrate arrived at the proper decision.

QUESTION 5

Do any TWO of the following -

- (a) Jane Sans was convicted of capital murder. When the allocutus was put she informed the judge that she was two months pregnant.

Advise the judge as to the course he should pursue.

- (b) Cedric Traille was convicted in the Petty Sessions Court (Jamaica)/Magistrates' Court (other jurisdictions). Two days after the decision of the Justices/Magistrate, he comes to you seeking your advice as to what steps he should take to perfect an appeal.

Advise him.

- (c) Set out and discuss briefly the different circumstances in which an indictment may be preferred in the Supreme/High Court.
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QUESTION 6

Contra was outraged by the conduct of Pershad who had falsely testified against him. Contra and another man decided to go to Pershad's house to attack him.

Later Pershad was seen at his house bleeding profusely and had to be sent to the hospital. Contra was seen in a parked car with another man near the house of Pershad. As a police constable approached the car both men alighted from the vehicle and ran. The constable gave chase and Contra was held; the other man escaped.

Contra admitted to the police that he had attacked Pershad with a knife. At the police station he was searched and found to be in possession of a knife and prohibited drugs.

- Contra was charged on an indictment containing counts for -
- (i) assault occasioning actual bodily harm;
 - (ii) possessing an offensive weapon;
 - (iii) possessing a prohibited drug without authority.
- (These offences are all indictable.)

In spite of the objection of Contra's counsel, these counts were tried together. The prosecution's case was that Contra had taken drugs for the purpose of getting himself into a suitable frame of mind for the commission of the assault.

Contra was convicted and sentenced. He now wishes to know whether or not the counts were properly joined in one indictment.

Advise him.

QUESTION 7

DJ on his 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 DJ not guilty of murder but guilty of the admitted manslaughter.

The jury however, had their own ideas and made it clear that they did not consider DJ guilty of either crime. The judge requested them to retire and reconsider their verdict. In spite of retiring three times the jurors refused to find DJ guilty of the admitted charge.

When the jury came back into court one of them told the judge - "The only reason he had 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, treated the case as a straight forward plead of guilty and imposed a two year suspended sentence on DJ.

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

QUESTION 8

M.S. who appeared before a magistrate on an indictment signed by the clerk of the courts charging her with the offence of obtaining goods by false pretences, pleaded guilty. She was sentenced to imprisonment for six months.

No order directing that the accused be tried for that offence appears to have been endorsed on the information laid against her as required by statute.

No objection was taken to this omission at the trial.

Seven days have elapsed since the conviction of M.S.

M.S. now wishes to know if she has a good ground of appeal and what steps she must take to perfect the appeal.

Advise her.
