

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1996

CRIMINAL PRACTICE AND PROCEDURE

THURSDAY, AUGUST 15, 1996

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.

**NORMAN MANLEY LAW SCHOOL LTD
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MONA, KINGSTON, 7, JAMAICA**

QUESTION 1

During the night of February 10, 1996, Robman and Nowaz entered the dwelling house of Rushdie by breaking a window.

Rushdie had retired to bed, having first secured all the doors and windows of his house. Robman put a knife to the throat of Rushdie and said "Give me the key to the vault". Rushdie screamed and his boarder, Kray, a policeman, came to this rescue. He held and disarmed Robman.

Nowaz stabbed Kray in the back, thereby forcing him to release his partner in crime. The two intruders then rushed from the house and disappeared in the dark.

A few days later Robman and Nowaz were detained by the police and subsequently identified by Rushdie and Kray at identification parades.

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

QUESTION 2

B was convicted in the High/Supreme Court for manslaughter on an indictment which charged him for murder.

³ According to the transcript of the shorthand note, the jury first retired at 10:15 a.m. They returned to the court at 10:45 a.m. to ask for a map which could not be given to them. They left the court 5 minutes later and then returned again at 11:10 a.m. According to the shorthand writer's transcript, what then transpired is as follows -

Registrar: Mr. Foreman please stand.
Members of the jury have you arrived at your verdict?

Foreman: Yes, Sir.

Q. Is your verdict unanimous?

A. Yes in respect of murder but no in respect of manslaughter.

Q. How say you? Is the accused guilty or not guilty of murder?

A. Not guilty.

Judge: How are you divided in respect of manslaughter?

A. 8 - 4

At this stage the Judge told them to go back and try to arrive at a unanimous verdict and if they could not do that, what they were entitled to do.

At 11:30 a.m. they were again escorted out of the court to their room. They returned at 12:25 p.m. The Judge plunged straight in and said, "Mr. Foreman have you been able to reach a unanimous verdict?"

The foreman replied, "Yes my Lord".

Judge: How say all of you? Guilty or not guilty of manslaughter?

Foreman: Guilty, Sir.

However, after the allocutus was put, but before B had been sentenced and before the jury had been discharged, the foreman told the court that he had made an error and that one juror had dissented from the verdict,

The Judge accepted the majority verdict and sentenced B.

Advise B.

QUESTION 3

O'Reilly pleaded guilty in the High/Supreme Court to counts 1, 2 and 3 on an indictment. He pleaded not guilty to the remaining two counts. His co-defendant pleaded not guilty to counts 3, 4 and 5 and the case was put back for trial.

At the trial, count 5 was quashed at the invitation of the prosecuting counsel who conceded that the count was not properly joined and the co-defendant then pleaded guilty to counts 3 and 4. O'Reilly was not re-arraigned. He was tried and convicted on Count 4 . Both men were sentenced.

O'Reilly appealed against conviction on the ground that the indictment to which he had pleaded was defective by reason of the inclusion of count 5 and that his pleas were a nullity.

Advise him as to his chance of success.

QUESTION 4

During the course of the trial of Ted who was charged with burglary and larceny, the jury sought and obtained permission to visit the house where the alleged burglary and larceny took place. Attorneys-at-law for the prosecution and defence did not object. The trial judge did not consider it necessary to attend.

At the said house the jury asked certain questions of witnesses who had already given evidence to which they received answers. The jury thereafter returned to the court where the trial was subsequently conducted and they then retired to consider their verdict.

Within one hour after their retirement, the jury sent a note to the trial judge requesting -

- (a) further information about two houses referred to in the evidence of the witnesses; and
- (b) a magnifying glass to assist them in looking at certain documents that were tendered in evidence.

The trial judge by a note in reply, informed the jury that he could not furnish any further information about the houses and that they must deliberate only on the evidence addressed in court. He, however, instructed the Registrar of the Court to furnish the jury with a magnifying glass as requested. The jury after deliberating for a further hour, convicted Ted. He was sentenced to 10 years imprisonment.

Ted wishes to appeal his conviction and sentence.

Advise him as to the merits of any such appeal.

QUESTION 5

Write notes on **THREE** of the following -

- (1) appeals from Petty Sessions Court;
 - (ii) fitness to plead;
 - (iii) challenge for cause;
 - (iv) suspended sentence;
 - (v) ordering of a new trial by the Court of Appeal.
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QUESTION 6

Answer **EITHER** (a) **OR** (b)

- (a) Write notes on **FOUR** of the major procedural differences between felonies and misdemeanors.
 - (b) Write notes on -
 - (i) appeals from the Resident Magistrate's Court, and
 - (ii) procedure on information charging an indictable offence in the Resident Magistrate's Court.
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QUESTION 7

Porthouse 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 that 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 a 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 autrefois acquit principle since the charges were the same. Counsel for the prosecution argued 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 8

An information was preferred against the defendant, Harry, under section 27 of the Road Traffic Act. Prior to the hearing of the information a summons was served on the defendant.

When the defendant appeared before the justices in obedience to the summons, the signed information was not before the court, but there was a list of cases to be heard that day which disclosed that the defendant was summoned in respect of an offence contrary to section 27 of the Road Traffic Act. A trial date was set. On that day, the defendant duly appeared before the justices. He was represented by counsel.

In pleading the defendant, the clerk to the justices read the particulars of the charge from the list of cases. While no records were kept of the precise words used by the clerk, the justices were satisfied that it was made clear to the defendant that he was being charged under section 27 of the Road Traffic Act, with driving a motor car in a manner which was dangerous to the public. The defendant pleaded "Not Guilty" and the hearing proceeded. At the close of the defence and as the justices were about to retire to consider their decision, the defendant's counsel asked to see the information. The information was thereupon brought into court and produced. The information in fact alleged that on April 10, 1996, the defendant "did drive a motor vehicle on a road recklessly or at a speed or in a manner which was dangerous to the public". The defendant's counsel submitted that the information was bad in as much as it appeared to contain three alternative charges and that there could be no conviction for an offence under section 27 of the Act. The prosecutor, on seeing the information for the first time, applied to amend it so as to allege the offence of driving a motor car in a manner dangerous to the public. The defendant's counsel objected to any amendment at that stage of the proceeding.

The Justices seek your advice.

Advise them.
