

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1997

CRIMINAL PRACTICE AND PROCEDURE

Monday, August 11, 1997

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 not necessary to transcribe the question you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

On January 14, 1997, Saukar retired to bed around 10:00 p.m. She had earlier secured all the windows and doors of her house. In the early hours of the morning of January 15, three men entered her bedroom. They aroused her from her slumber and covered her mouth while some pieces of jewelry were removed from her person. Other pieces of jewelry and cash were taken from a bag in the room.

On the men's departure, Saukar went and spoke to her next door neighbour who accompanied her to the Old Street Police Station. At the station, she made a report. A few days later, she went on an identification parade and identified Raleigh as one of the three men who came into her room on January 15. Raleigh was arrested and charged.

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

QUESTION 2

K was charged with a Road Traffic offence which is triable either on indictment or on summary conviction. The prosecution elected to proceed summarily. K. pleaded not guilty and his counsel immediately moved for dismissal of the charge on the ground that the prosecution of it summarily was barred by statute.

The magistrate permitted counsel for the prosecution to withdraw the information against the objection of counsel for the accused, and lay a new one on which a preliminary hearing was held. K was eventually tried and convicted, having failed in his plea of autrefois acquit. K appealed.

The question for the decision of the Court of Appeal was whether there had been an acquittal on the first information which would have entitled the accused to succeed on the plea of autrefois acquit which he had made at this trial.

Write an opinion as to whether or not the plea in bar should succeed.

QUESTION 3

Joe was committed to stand trial on two counts of burglary and robbery with violence arising out of offences committed on the same day but unrelated to each other.

He was accordingly indicted. The indictment was inadvertently not signed by the proper officer. On the day of the trial, Joe, when arraigned, pleaded not guilty to both counts. The prosecution thereupon applied for severance of the indictment and separate trial of the two counts on the ground that they were improperly joined.

The defence submitted that the better course would be to quash one of the counts. The court ordered separate trials. A jury was empanelled to try the burglary charge. Joe was convicted and sentenced. He is dissatisfied with his conviction and sentence and seeks your advice.

- (i) Advise him.
 - (ii) If instead, the court had quashed one of the counts as submitted by the defence and proceeded thereafter to try the other charge, would your advice be any different?
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QUESTION 4

Uriah and Modeste when arraigned, pleaded not guilty to a charge of murder preferred against them. The jury were then sworn and both accused were put in their charge. At the close of the case for the prosecution, the two accused were informed of the three courses that were open to them to adopt whereupon they both replied that they wished to change their pleas to guilty of manslaughter. The trial judge agreed to accept the pleas and proceeded to sentence each accused to five years hard labour. He thereafter discharged the jury.

When the trial judge returned to his chambers, his clerk informed him that he did not put the allocutus to the two accused. The trial judge immediately gave instructions that all parties including the two accused and the jury return to the court. He then put the allocutus to the two accused. They both said nothing. The trial judge thereupon informed the two accused that the sentences would stand.

Uriah and Modeste seek your advice with regard to the procedure adopted by the trial judge at the trial and as to whether they can successfully appeal against their convictions and sentences.

Advise them.

QUESTION 5

Henry was indicted on three counts of wounding with intent, larceny of a motor car and receiving the said motor car knowing the same to have been stolen. On his arraignment, Henry pleaded not guilty of the offence of wounding with intent but guilty of the offence of unlawful wounding and not guilty of the offence of larceny but guilty of the offence of receiving the said motor car, knowing it to have been stolen. The trial judge rejected Henry's plea of guilty of the offence of unlawful wounding. The trial thereafter proceeded on the counts of wounding with intent and larceny of a motor car. The jury acquitted Henry on both counts. The trial judge nevertheless proceeded to sentence Henry in respect of the offences to which he had pleaded guilty. Henry contends that the trial judge was wrong to sentence him as he did and seeks your advice.

Advise him.

QUESTION 6

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

- (i) challenge for cause;
 - (ii) suspended sentence;
 - (iii) ordering of a new trial by the Court of Appeal;
 - (iv) the procedure when an accused stands mute on arraignment;
 - (v) the procedure when a child of tender years is called as a witness.
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QUESTION 7

As a result of a police raid on a nightclub in Piprol Road, a number of persons was arrested and charged with various offences. Among those arrested was Roger, also known as "Sweet Sandra", who was charged with indecent exposure.

When the matter first came before the magistrate's court on Monday, February 3, 1997, there was a large gathering of various onlookers and in the midst of all the voices, the defendants were all granted bail in their own recognisance and the matter was adjourned to Monday, February 17, 1997.

On February 17, Roger not having appeared, the magistrate issued a warrant for his arrest and the matter was adjourned to March 3, 1997. On that date, the warrant not having been executed, the matter was adjourned to March 17.

On March 17, Roger again having failed to appear and the warrant still not having been executed, the magistrate decided to hear the matter in his absence, convicted Roger and adjourned the matter to April 2, 1997 for sentencing.

On April 2, the regular magistrate was ill and magistrate Gloria presided. When the matter was called, she read the file and imposed a fine of \$250 to be paid within one week with an alternative of five years imprisonment. Five minutes later Roger appeared and informed magistrate Gloria that he had been seriously ill since February 15 and had in fact only recently been reached at the hospital. He apologised to the court for his absence and requested that the matter be heard afresh. She told him that the matter was then out of her hands.

Roger has consulted you and requests your advice.

Advise Roger.

QUESTION 8

Bach was charged on an indictment for murder. The trial began in St. Ann Circuit Court before a jury of 12 persons and Mr. Justice Quick.

On the first day, two witnesses for the prosecution gave evidence. On the morning of the following day, the No. 5 juror, Miss Hall, was absent. The court adjourned for a short while to await her arrival. When the court resumed at 11:00 a.m., she was still absent. There was a discussion in open court as to whether or not the trial should proceed without her.

Counsel for the prosecution was of the view that the trial should proceed with eleven jurors, so did counsel for the defendant.

The trial proceeded with eleven jurors. No note was made of any formal discharge or of the ground on which the trial was proceeding with eleven jurors only.

At 2:30 p.m. at the close of evidence of the third witness the following note was made on the record:

"Foreman of the jury makes an apology on behalf of No. 5 juror, Miss Hall, for not turning up in time. She claimed she lives far from the court and could not get early transportation. Excuse accepted. Juror told she is excused for remaining part of case".

The trial went on. It lasted for 3 days. The eleven jurors unanimously found Bach guilty of murder. He was sentenced. He has now appealed and wishes to know if the trial judge was right in trying the case with eleven jurors.

Advise Bach.
