

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1998

CRIMINAL PRACTICE AND PROCEDURE

(Tuesday, August 11, 1998)

Instructions to Students:

- (a) Time: 3½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

J. Jake and B. Blake were seen by two constables, F and S running from certain premises towards a motor car which they entered; Blake getting into the driver's seat and Jake into the passenger seat. As the car reversed Constable F. called out "Police, Stop".

Jake put his head out of the window, pointed a firearm at the constables and fired two shots at them.

The car continued to reverse and crashed into a light pole. Jake and Blake and two other occupants C and W ran from the car. The constables gave chase and as they did so Blake spun around pointed a gun at them and fired two shots at them.

Blake and Jake were later arrested and charged.

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

QUESTION 2

(a) Sonny appears for his trial at the Supreme/High Court. When called upon to plead he remains silent. The Judge requests your assistance as prosecutor as to the correct procedure which should now be followed.

What are your submissions?

(b) Joy and Maya are being tried together for robbery. After the close of the prosecution's case and during the case for the defence Joy absconds after she has been cross-examined by the prosecutor. The latter urges the trial Judge to continue with the trial in Joy's absence. The Judge invites you as attorney-at-law for co-accused Maya to address him.

What would be your response be in the circumstances?

QUESTION 3

(a) John is being tried at the Supreme / High Court for burglary. After an overnight adjournment one of the jurors fails to turn up for the continued hearing. The judge adjourns the matter for enquiries to be made. During the course of the day a telephone call is received at the Supreme / High Court purportedly from the juror in which she states that she was offered a bribe to give a certain verdict and did not know what to do.

As trial judge what would you do?

(b) Assume on the facts above that the juror is discharged, the trial proceeds and the jury retires. At the end of the statutory period of time which must expire before a majority verdict is acceptable the jury is sent for. The trial judge asks the foreman whether the members of the jury have arrived at a verdict on which they are all agreed. The foreman replies that they have not. The judge then says "Retrial ordered". The foreman then states that if given more time they may agree. The judge consents and the jury retires. The jury returns twenty minutes later with a verdict of 5 in favour of guilty, 1, for not guilty.

Are there any irregularities in the delivery of the verdict?

QUESTION 4

Sam appears before the magistrate charged on three separate complaints with the offences of assaulting Tom, resisting arrest and assaulting a police officer in the execution of his duty. The offences are all alleged to have occurred on March 20, at Joshua's bar during the course of a fracas in which Tom was allegedly injured by Sam.

The magistrate informs Sam that he intended to hear the matters together. Sam objects but the magistrate allows the joint trial. The hearing continues but Sam refuses to say anything in his defence. He is convicted on all three complaints. Sam is dissatisfied with the magistrate's actions and wishes to appeal.

Advise him.

QUESTION 5

Charlo who is 18, is charged summarily with the offence of possession of marijuana. On the first day of hearing of his case, Charlo is unrepresented and when the charge is read to him he says "Guilty" with an explanation. He then tells the magistrate that he had been handed a cigarette by a man called Boyo at the street corner where a group of young men were gathered. He only realised it was a marijuana cigarette when the police patrol pounced on them and seized the cigarette.

The prosecutor informs the court that Boyo is well known to the police as a drug user and Charlo is new to the area. Charlo then requests an adjournment to obtain counsel.

The magistrate refuses and says, "So you are involved with bad company?" Without further ado and without asking Charlo anything more she proceeds to sentence him to three years imprisonment.

Advise Charlo as to possible grounds for an appeal.

QUESTION 6

At a preliminary enquiry into a charge of murder against Courtney the prosecution calls several witnesses including Carol, an 11 year old.

The magistrate takes sworn evidence from Carol without enquiring as to her competence. At the end of the prosecutor's case the defence makes a no case submission. After the prosecution has established a case" The caution is then administered to the accused who on the advice of his counsel says nothing. The counsel then informs the magistrate that based on what he said in overruling the submission he had already made up his mind to convict the accused for trial thus denying him a fair trial.

Courtney is committed to stand trial and the following week the newspapers carry various stories to the effect that Courtney, brother of well known convicted murderer and drug baron Chad, is to stand trial for murder. Chad is presently in Death Row having been convicted for two murders.

Courtney's trial is listed for the Supreme / High Court and on the first date of hearing his counsel proposes to take certain preliminary points.

Advise as to what these points are likely to be and their respective merit.

QUESTION 7

Maggs, a taxi driver, was convicted of causing the death by dangerous driving of a racing cyclist, who was taking part in a timed event. The Crown suggested that Maggs had either fallen asleep, having driven for long periods or momentarily lost concentration when he collided with the cyclist. The accused did not give evidence, but a written record of his interview with the police was put before the jury. In that interview he had said that as he was driving along the cyclist suddenly veered towards the middle of the road. The accused had to take evasive action to avoid hitting the crash barrier so he swerved to the left, the cyclist did the same thing, hence the collision.

This account was not supported by the forensic examination of the car and the cycle, which suggested that both car and cycle were travelling straight at the moment of impact, and the cycle was not hit at an angle. The jury had a plan of the locus in quo and, after retiring they asked for a tape measure. There being no objection from either side they were provided with a police surveyor's tape which was the only one available.

Maggs was convicted.

Write an opinion as to whether or not the compliance with the jury's request was irregular.

QUESTION 8

(a) At the start of the preliminary enquiry into a charge of murder against Kevon the charge is read out him. Kevon is alleged to have stabbed his girlfriend in a fit of jealous rage and even though he is told that he is not required to plead Kevon say, "Ah guilty, don bother with a trial, ah ready to dead".

The magistrate is in a quandary as to how to proceed.

Advise the magistrate as to the procedure to be followed.

(b) Zeke is convicted of assault occasioning actual bodily harm at the Magistrate's Court, He is fined. Two days later the victim, Kim is taken to the hospital and X-rays show a blood clot in her brain. Medical evidence reveals that the blood clot was caused by the injury inflicted by Zeke.

Kim later becomes seriously ill and is slipping in and out of consciousness. The police are of the opinion that Zeke has escaped too lightly and wish to be advised as to the possibility of any further charges.

Advise the police.
