

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTAL EXAMINATIONS, 2000**

CRIMINAL PRACTICE & PROCEDURE

(Monday, August 7, 2000)

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 territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Jona and Batman were seen by Constables Alert and Quick, running from a bank towards a motor car which they entered. Batman got into the driver's seat and Jona into the passenger's seat.

As the car drove off, Alert called out "Police, stop." Jona pointed a firearm at Constables Alert and Quick, who were some 16 feet away and fired two shots at them. The Constables gave chase. During the chase the Constables were again fired at, this time by Batman. The men escaped. They were later apprehended and charged.

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

QUESTION 2

- (a) Emery is arraigned on an indictment in the Supreme/High Court. When called upon to plead, he remains silent. The judge seeks your advice as to the correct procedure he should pursue.

Advise him.

- (b) Sharp and Burles are being tried together for robbery. After the close of the prosecution's case, the trial was adjourned to following day. When the trial resumed, both accused persons were absent. Counsel for Sharp handed in a medical certificate on behalf of his client. Counsel for Burles

told the Court that he had neither seen nor heard from his client since the adjournment.

Counsel for the prosecution invites the judge to continue with the trial in the absence of both accused persons.

Advise the judge.

QUESTION 3

K was charged with a Road Traffic offence, which is triable either on indictment or summarily. 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 the charge 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 is whether there had been an acquittal on the first information which would have entitled K to succeed on the plea of 'autrefois acquit'.

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

QUESTION 4

O'Reilly pleaded guilty in the High/Supreme Court to counts 1, 2 and 3 of 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 set for trial.

At the trial, count 5 was quashed at the invitation of prosecuting counsel who conceded that the count was not properly joined. The co-defendant then pleaded guilty to counts 3 and 4.

O'Reilly was not rearraigned. 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 chances of success on appeal.

QUESTION 5

Reynold and Simeon were arraigned before Justice Farr and a jury for the murder of Owen. Both Reynold and Simeon pleaded "not guilty". They were put in charge of the jury and the trial proceeded. During the opening of the case for the prosecution, the attorneys-at-law for the accused men interrupted and said that their clients wished to change their pleas to guilty of manslaughter, subject to the acceptance by the judge and the prosecution.

The judge agreed to accept the pleas and proceeded to sentence each accused to three years hard labour and thereafter discharged the jury.

One week later Simeon's relatives consulted you on behalf of the prisoner and complained that they were dissatisfied with what transpired at the trial.

Advise the prisoner.

QUESTION 6

A statute provides that anyone who "contravenes any restriction or requirement imposed by or under this Act" shall be liable on summary conviction to a fine not exceeding \$1,000.

Sanchez was charged with contravening a requirement imposed by the Statute. He was tried and convicted by Justices of the Peace sitting in Petty Sessions Court. Two days after conviction Sanchez seeks your advice on the following:

- (a) whether or not the Justices had jurisdiction to try him;
- (b) the steps he should take to perfect an appeal.

Advise him.

QUESTION 7

Garney was convicted of motor manslaughter. Two police officers said they saw him driving at 11:30 p.m. Garney said he was not the driver. His counsel asked that the jury have a view of the locus in quo so they could judge for themselves the quality of the street lighting.

The judge considered that it would cause too much trouble and expense and authorised one juror who lived near the scene to view it and describe it to the others.

Write an opinion as to whether or not the judge breached any rule of law and if so, state the procedure which the judge should have followed.

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, 2000 the defendant "did drive a 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 that it appears 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.
