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COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 2002

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, AUGUST 5, 2002)

Instructions to Students

- (a) Time: 3 ½ 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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

On April 14, 2002, Ms. Sanker 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 April 15, three men entered her bedroom. They aroused her from slumber and covered her mouth while some pieces of jewellery were removed from her person. Other pieces of jewellery and cash (\$100) were taken from a bag in her room.

On the intruders' departure Ms. Sanker went and spoke to her next door neighbour who accompanied her to the Old Street Police Station where she made a report. A few days later she attended an identification parade and identified Raleigh as one of the three men who came into her room on April 15. Raleigh was arrested and charged.

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

QUESTION 2

Stanley was charged, inter alia, with larceny. The case against him was that he had removed a pair of curtains valued at \$1,000 from the home furnishing section of a department store, and, had taken them straight to the customer refund desk. He claimed that he had bought them at the store the previous evening and was therefore entitled to a refund. There was no relevant entry in the till rolls of the furnishing section and he did not have a receipt.

After the close of the prosecution's case, the defendant in giving evidence said for the first time that he had not paid for the curtains in the furnishing section but

at a till near the entrance of the store. At the end of the case for the defence, the prosecution was granted leave to adduce evidence in rebuttal relating to the relevant till rolls which showed that no purchase of \$1,000 had been made.

Stanley was convicted. He wishes to appeal.

Write an opinion as to whether or not the trial judge was right in permitting the prosecution in adducing rebuttal evidence.

QUESTION 3

Betty was convicted of assault occasioning bodily harm. It was alleged that she "glasses" the victim in the course of a scuffle, causing her injury. Betty's defence was that the injury was caused accidentally. The prosecution's evidence was in places contradictory but the judge rejected a submission of no case to answer made at the end of the prosecution evidence. After Betty had given evidence, the judge indicated to counsel that it would be right to stop the case.

Prosecuting counsel submitted that the judge had no power to do so once the case had passed the close of the prosecution case and that only the jury could do so. The judge asked the jury if they wished to stop the case and they indicated that they did not.

The judge accepted the view of the jury and continued with the trial.

Betty was convicted and sentenced. She seeks your advice on the ruling of the court.

Advise her.

QUESTION 4

Poole was charged with indecent assault. She had pleaded not guilty on arraignment but changed her plea during trial to that of guilty. The trial judge did not adopt the course of requiring the jury to return a verdict. Instead the judge discharged the jury.

However, the day after the change of plea, Poole applied to vacate the guilty plea. The trial judge refused the application. Poole was sentenced to seven months imprisonment.

Poole appealed. The main ground of appeal is that the conviction was a nullity.

Advise Poole as to her chances of success.

QUESTION 5

- (a) Steve was convicted of conspiracy to defraud. An accountant, Uton, was a witness named on the back of the indictment. Uton had first been interviewed by an attorney-at-law for Steve and then gave a statement to the police. Prosecuting counsel referred to Uton's evidence in opening his case. Having, however, obtained from other witnesses the evidence Uton was to give, he decided not to call Uton or tender him as a prosecution witness because he regarded him as an unreliable witness, whose competence he wished to attack. The defence objected to prosecuting counsel's decision not to call Uton. However, the judge ruled that the decision was right.

The defence called Uton.

Steve wants to know if the trial judge erred in not directing prosecuting counsel to tender Uton for cross-examination by the defence.

Advise him.

- (b) German was charged summarily before a magistrate. He pleaded not guilty. After the first witness for the prosecution was cross-examined, counsel for the defendant submitted that the information disclosed no offence known to law. He accordingly asked the magistrate to dismiss the charge against his client.

Prosecuting counsel conceded that the information was defective but asked the magistrate for leave to amend the information. The application was vigorously opposed by defence counsel.

Advise the magistrate.

QUESTION 6

Mitchell was indicted in the Supreme/ High Court for larceny of a motor car. The trial judge refused the application by counsel for the defence to see the statements of certain witnesses who had given the police a description of the driver of the stolen car.

One of the planks of the prosecution's case was a written confession made by the accused. The judge heard evidence on the *voir dire* from the police officers and the accused. The judge then gave his ruling. He found that the statement was voluntarily made and therefore admissible.

Throughout the proceedings on the *voir dire*, the jury was absent. When the jury returned, the judge addressed them as follows:

"When you were sent away I had to determine the admissibility of certain evidence. I have completed that exercise and the Crown is going to be permitted to lead that evidence. The same questions which were sought to be raised before me as a judge of the law would now be canvassed before you as judge of the facts. And I will, at the appropriate stage, have to direct you that any decisions that I would have made in terms of voluntariness, are a different question from your own final determination of questions of fact as a matter of truth."

Mitchell was convicted. He wants to know if he has any good grounds of appeal.

Advise him.

QUESTION 7

Charles appears before the Magistrates' Court in committal proceedings charged with robbery of a wristwatch and with larceny of a lawnmower.

Evidence was led that Charles had assaulted David, who is a self-employed builder, in order to obtain a wrist-watch which David was wearing. During the incident, David sustained a broken arm.

Evidence was also tendered on behalf of the prosecution to the effect that three months before the alleged robbery, Charles had stolen the lawnmower belonging to David.

Charles in his defence gave evidence and stated that the wristwatch was his, saying that he had loaned it to David.

The magistrate committed Charles to stand trial only on a charge of inflicting grievous bodily harm on David.

At the trial, Charles is indicted for inflicting grievous bodily harm. After his opening speech, Crown Counsel applies to the court to have the indictment amended to add one count for robbery of a wristwatch and one count for larceny of a lawnmower. Counsel for Charles objects on the grounds that –

- (i) his client was not committed to stand trial for those offences; and
- (ii) the indictment before the court is not defective.

Advise the judge.

QUESTION 8

Paul was charged with a summary offence under the Road Traffic Act. The information was defective in that it charged two offences. At the commencement of the trial the magistrate indicated to the prosecuting counsel that the information was bad for duplicity and invited him to elect. The prosecutor refused to elect whereupon the magistrate dismissed the information. Shortly after the dismissal two new informations were laid charging Paul separately with the two offences which were averred in the defective information.

Paul appears in court to answer these charges.

Write an opinion advising Paul as to what course is now available to him.
