

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 2004

CRIMINAL PRACTICE AND PROCEDURE

(THURSDAY, AUGUST 5, 2004)

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

During the night of February 10, 2004, Robman and Nawaz entered the dwelling house of Richman by breaking a window.

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

Nawaz stabbed Protector 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 after, Robman and Nawaz were detained by the police and subsequently identified by Richman and Protector at identification parades.

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

QUESTION 2

Ali was indicted for larceny and receiving. The same goods were the subject of each of the counts which were laid in the alternative. The jury were directed that if they convicted Ali of larceny they need not consider the count of receiving since the counts were "alternative counts and indeed, alternative as between themselves".

When the jury returned to the court they were asked by the clerk to reply "yes" or "no" to the question whether a unanimous verdict had been reached in regard to the two counts. On the reply of the Foreman, "guilty", the clerk asked "On which count do you find him guilty?" The foreman replied "On both counts." Questioned by the judge the foreman said they found Ali guilty of both counts. The judge did not explain that that was contrary to his direction. Ali was sentenced to two (2) years imprisonment on the first count and admonished and discharged on the second.

Advise Ali whether or not there was an irregularity and, if so, whether an appeal would be appropriate and why.

QUESTION 3

- (a) Sonny is charged for dangerous driving. At his trial the Crown closes its case without proving the identity of the driver. Defence counsel makes a no-case submission. The prosecution applies to reopen its case.

The magistrate seeks your advice. Advise him.

- (b) On the trial of Husky for rape, the defence was mistaken identification. The jury on their retirement requested and was given an almanac which indicated that there was a full moon the night of the alleged incident. The almanac was not an exhibit in the case. Husky was convicted.

Husky wishes to know if there was any irregularity.

Advise Husky.

QUESTION 4

Saunds was indicted for murder. The jury retired at 11:30 a.m. to consider their verdict, murder and manslaughter having been left for their consideration.

The jury returned at 12:25 p.m. and asked the trial judge to repeat his directions on provocation. The judge obliged and the jury went back. The jury then returned at 1:00 p.m. They made it quite clear that they could not agree upon murder but that they probably would agree on manslaughter.

The judge discharged them from their obligation of returning a verdict on murder. He again repeated his directions on provocation and sent them back to consider manslaughter. They returned after another forty-five minutes. By a majority of 11:1, Saunds was found guilty. He was sentenced to five years imprisonment and now wishes to know whether or not the judge erred in discharging the jury as he did and subsequently proceeding to accept the manslaughter verdict.

Advise Saunds.

QUESTION 5

In March 2002, Morris commenced operating a car wash business without first obtaining the necessary certificate of lawful development under the Town and Country Planning Act.

On October 16, 2002, Morris was served with an enforcement notice under the said Act requiring him to cease operations by October 21, 2002. Morris however,

continued to operate the car wash business, and in December 2002, Morris applied for the certificate.

In March 2003, Morris was charged on information/complaint triable in the Magistrates' Court for failure on October 21, 2002 to comply with the enforcement notice. The trial of the information/complaint was set for April 3, 2003. Prior to the trial date, the required certificate of lawful development was granted. In consequence, with the consent of the magistrate, on the trial date the information/complaint against Morris was withdrawn by the prosecution. Subsequently however, in view of alleged misrepresentations and non-disclosure by Morris in his application, the certificate of lawful development was revoked on April 10, 2003.

On April 30, 2003, a new information/complaint was laid against Morris in identical terms to the earlier one, alleging the same failure on October 21, 2002 to comply with the enforcement notice. The information/complaint is now before the Magistrates' Court for trial.

Morris seeks your advice as to what plea(s) he may raise at this stage.

Advise Morris.

QUESTION 6

On March 3, 2004, the magistrate discharged Jomo at the conclusion of a preliminary enquiry into a charge of wounding with intent. She found that there was insufficient evidence against the accused because, in her opinion, the prosecution witnesses were not credible. The Director of Public Prosecutions

(DPP)/Attorney General (AG) is dissatisfied with this decision and believes that the magistrate has strayed outside of her function as a committing magistrate. He is also of the opinion that there is sufficient evidence to commit the accused.

- (i) What is the role of a magistrate in determining whether or not to commit an accused for trial in the Supreme/High Court?
- (ii) What can the DPP/AG do to ensure that Jomo stands trial in the Supreme/High Court?
- (iii) Assuming that the magistrate had committed Jomo to stand trial on the lesser charge of unlawful wounding, but the DPP/AG feels that there is sufficient evidence of wounding with intent, how should he proceed to ensure Jomo stands trial for wounding with intent?

QUESTION 7

Ainsley and Marcos were indicted in the Supreme/High Court for the larceny of a motor car valued at \$5,000. On arraignment, they both pleaded "Not Guilty". Counsel for the prosecution opened the case after a jury had been selected. As soon as the first witness for the prosecution was called, Ainsley began to stamp and shout insults at the trial judge with the object of preventing the case from proceeding before that judge.

- (i) Had you been the presiding judge what procedure would you have adopted?

- (ii) Assuming you were the defence counsel for Marcos and the presiding judge sought your assistance, what submission(s), if any, would you have made to protect the interest of your client?
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QUESTION 8

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

When the matter first came before the magistrate's court on February 3, 2004, 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 recognizance and the matter was adjourned to February 17, 2004.

On February 17, Roger not having appeared, the magistrate issued a warrant for his arrest and the matter was adjourned to March 3, 2004. 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, 2004 for sentencing.

On April 2, the regular magistrate was ill and magistrate Patricia Halo 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 three months imprisonment. Five minutes later Roger appeared and informed magistrate Halo that he had been

seriously ill since February 15 and had in fact only recently been reached at the hospital. He apologized 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.
