

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2006**

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, AUGUST 7, 2006)

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

Marcus and Marvin were seen by Constables Alert and Quick running from a bank towards a car which they entered. Two other persons, Crook and Whiteman were in the car. The car drove off with Crook behind the steering wheel. Constable Alert shouted "Police! Stop!" Marcus pointed a firearm at Alert and Quick and fired two shots. The constables flung themselves to the ground and returned the fire. The car sped away and crashed into another car. All four occupants ran from the car. Alert and Quick gave chase and as they did so Marvin fired two shots at them. The hot pursuit continued and with the help of other policemen, all four men Marcus, Marvin, Crook and Whiteman were held.

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

Explain your draft in not more than fifty words.

QUESTION 2

Jona was on trial for the summary offence of assault upon a female. The particulars of the offence were that he, Jona, on January 20, 2006, in the parish of St. Catherine assaulted Jane Simple. When the matter first went before the magistrate Jona pleaded not guilty. The matter was set for trial on February 6, 2006.

On the trial day, the prosecutor told the magistrate that Ms. Simple was ill and not available. He accordingly applied for an adjournment. Counsel for the defence resisted the application.

The magistrate ruled that the matter would proceed and called upon the prosecutor to present his case. The prosecutor reiterated that the witness for the prosecution was absent. Thereupon the magistrate dismissed the charge and discharged the defendant.

The following day the prosecutor instructed the police to prefer a new information/complaint charging Jona with the same offence. This was done and Jona was served with a new summons. He appeared before another magistrate and outlined the history of the matter to that magistrate.

The magistrate seeks your advice as to whether or not he should proceed to hear the charge against Jona.

Advise the magistrate.

QUESTION 3

Stanley was charged, *inter alia*, with larceny/theft. The case against him was that he had removed a pair of curtains valued at \$3,000 from the home furnishing section of a department store and had taken them straight to the customer refund desk, claiming 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 \$3,000 had been recorded.

Stanley was convicted and has appealed on the ground that the trial judge was wrong to admit the rebutting evidence.

Write an opinion as to Stanley's chances of success on appeal.

QUESTION 4

- (a) On the trial of Goodson for murder, after the jury had retired to consider their verdict, Boysie, a juror, left the jury-room with the consent of the others and made a telephone call from a booth a few feet away. Thereafter, he was prevented from rejoining the other jurors. The judge discharged him and the trial proceeded to verdict. Goodson was convicted. He wants to know if there was a material irregularity.

Advise Goodson.

- (b) Carnis was charged for rape. The jury, after they had retired, returned and said they would like further information on the distance from Carnis' house to the scene of the alleged offence. The judge said: "If both counsel are minded to agree, I would wish this question to be answered." Both counsel agreed, and a statement was made by defending counsel which was treated as an admission. Carnis was convicted. He wants to know if he has a good ground of appeal.

Advise Carnis.

QUESTION 5

Charlie was charged on an indictment for rape. At the end of the prosecution's case, counsel for the defence submitted that the defendant should not be called upon to answer the charge as the prosecution had failed to establish a *prima facie* case.

The trial judge asked the jury to say whether or not they wished to hear further evidence. The foreman replied that the jury wanted to hear the defendant's defence. The trial judge told the jury that he was entirely in agreement with them but that he was prepared to stop the case if they so desired. The trial proceeded. Charlie was convicted. He now wishes to appeal.

Advise Charlie whether or not he needs leave to appeal and his chances of success on appeal.

QUESTION 6

Henry was charged on an indictment containing three counts. The first count charged him with wounding with intent. The second and third counts charged him with larceny/theft of a motor car and receiving the said motor car knowing it to have been stolen, respectively.

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/theft but guilty of the offence of receiving. 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/theft 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 Henry.

QUESTION 7

An Act provides that “parking a vehicle elsewhere than in a place provided for the purpose or otherwise than in the manner required by an authorized officer” is prohibited. The Act further provides that anyone who contravenes any such prohibition shall be guilty of an offence triable summarily.

An information/complaint charged Dormo that he on January 10, 2006, in the parish of St. Andrew unlawfully parked a motor vehicle elsewhere than in a place provided for that purpose and otherwise than in a manner required by an authorized officer.

Write an opinion as to whether or not this charge is bad for duplicity.

QUESTION 8

Kerry and Patel have been indicted for murder. Both pleaded not guilty. On April 7 this year, the jury finds Kerry guilty of murder and Patel of manslaughter. Patel is sentenced to life imprisonment and Kerry to death.

On the following day both men filed notices of applications for leave to appeal, but Kerry inadvertently omitted to sign the notice.

On April 10, counsel advised Patel against pursuing the appeal because of the current attitude of the Court of Appeal in respect of what it deems “worthless appeals”.

As a result, three days later Patel withdraws his appeal. Patel has now been advised by Senior Counsel that he has good grounds of appeal. Patel has also noticed that since his conviction, several accused persons who were convicted of manslaughter have been made eligible for parole after ten years imprisonment.

Kerry has now been advised by the Registrar of the Court of Appeal that his notice was unsigned and is therefore invalid. He has applied to the Court to waive non-compliance with the ruling.

- (i) Advise Patel as to the necessary procedural steps which must be taken to bring his appeal before the Court of Appeal and the likelihood of it being heard.
 - (ii) Advise Kerry as to the likelihood of his appeal being heard.
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