

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2008

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, AUGUST 4, 2008)

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 question you attempt.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

On May 12, 2008 at 4:00 p.m Fred Jones and Roy James trailed Jane Lane to her house with the intention of having sexual intercourse with her. Both men forced her into the house. They had knives in their hands. She protested. First Fred had sexual intercourse with her, while Roy stood by with his knife. Roy then tried but did not penetrate her. They then both ran from the house. While leaving Roy saw a gold ring on a table in the back room. He snatched it and placed it in his pocket. Both were arrested later that day.

Draft the indictment. Give brief reasons for your draft.

QUESTION 2

“In Jamaica as in England, in the case of offences which are triable only summarily ..., it is not normally practical or necessary in order to obtain a fair trial for the defendant to be served in advance with copies of witnesses’ statements”.

This statement was made by Lord Woolf in *Franklyn & Vincent v R* (1993) 30 JLR 135 (P.C).

Discuss.

Would your views be different if the offence was indictable and being tried by a judge and jury? If so, explain why.

QUESTION 3

Mark Swift was convicted of robbery with aggravation of articles from an appliance store in Kingston at 9:30 a.m. The store clerk who knew him before, gave an eye-witness account of the robbery.

Swift suggested in his cross-examination of the investigating police officer, Corporal Brown, that he Swift had told him that he had been at the May Pen Police Station, 30 miles away at the relevant time. Corporal Brown denied that he was told this.

Swift gave evidence, in his defence of alibi, of his presence at the said May Pen Police Station, at the relevant time, and of an incident with a policeman Sergeant Francis there.

After the close of the case for the defence, the prosecution was allowed by the trial judge to call Sergeant Francis to give evidence in rebuttal. The latter denies seeing Swift at the said police station. Swift was convicted and sentenced.

Swift wishes to appeal. Advise his attorney-at-law of his chances of success.

QUESTION 4

Aston and Basil were charged and convicted of possession of marijuana. They had been searched on entering the main airport of the country and each had a bag containing 4 lbs of marijuana, along with 50 items of clothing. The prosecution's case was that they should have been aware of the additional

weight, thereby implying knowledge. The defendants said that they were unaware of the change of weight.

After the judge summed up and the jury retired, the jury sent to the trial judge a note requiring weighting scales to conduct experiments with the exhibits. The trial judge agreed, despite objection by defence attorney-at-law, but warned the jury of the danger of such experiments.

The attorney-at-law for the defence wishes to appeal on the ground that the trial judge was in error in allowing the jury the use of the scales.

Advise him with reference to decided cases.

QUESTION 5

Allan Mack and James Brown were charged with robbery with aggravation and shooting with intent. After the summing up by the trial judge the jury retired for 45 minutes. They were recalled by the trial judge who gave them further directions on good character and identification. The jury retired again.

After 16 minutes they returned and delivered a majority verdict of guilty. Both accused were sentenced.

Advise their attorney-at-law whether or not it was legally proper to accept such a verdict, giving reasons for poor decision.

Would your answer be any different if the charge had been murder? If so, give reasons.

QUESTION 6

“An information shall allege only one offence, otherwise, it is bad for duplicity.”

Discuss the above statement, with reference to the summary jurisdiction statute of your territory and the decided cases.

QUESTION 7

- (a) What is a voluntary bill of indictment? Explain the statutory powers of the Director of Public Prosecutions/Attorney General, in preferring such a bill, with reference to the decided cases.
- (b) An accused charged with murder, pleaded guilty to manslaughter. The prosecution sought to accept the plea and the trial judge approved the acceptance of the plea. The Director of Public Prosecutions/Attorney General entered a *nolle prosequi*, and preferred a new indictment for murder. The accused was convicted of murder and now seeks to challenge the actions of the Director of Public Prosecutions/Attorney General.

Advise his attorney-at-law of his chances of success.

QUESTION 8

- (a) The appellant Robert Orb was convicted of wounding with intent. Witnesses Xavier and Yari had given evidence of the preliminary inquiry/committal proceedings into the charge. Subsequently, they gave statements to their attorneys-at-law contradicting their earlier statements. The witnesses' names were on the back of the indictment, but the prosecution refused to call them at the trial, regarding them as unreliable.

The attorney-at-law for Orb wishes to appeal. Advise him of his chances of success.

- (b) The appellant was charged with the offence of rape. At the trial, you are the prosecutor wishing to call two witnesses who had not given evidence at the preliminary inquiry/committal proceedings.

Explain, with decided cases, whether this is possible and the procedure that you may employ, in order to lead admissible evidence from such witnesses.
