

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2015

CRIMINAL PRACTICE AND PROCEDURE

(AUGUST 10, 2015)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Robeno Rich was charged with the offence of robbery. The allegations against him were that on April 6, 2015 he barged into the “Nice Looks” hairdressing parlour and robbed a woman sitting under the hair dryer of her jewellery and handbag. He then fled. An alarm was raised and passers-by chased him. During the pursuit, he turned a corner and was briefly out of their sight. When the citizens turned the corner, they came upon him on the ground with the bag in his hand, looking puzzled. He later explained to the police that a man ran around a corner and collided with him. The man then thrust the bag in his hand and ran off.

When he appeared in court, his attorney applied for bail. Among the things he said in his application to the court were that his client was a young student at the “Shining Future Art School” and that he was on his way to school when the incident occurred. He lived with his parents and had never been in trouble with the law.

The judge, after considering the application, said:

“Do you think I can afford to be the laughing stock of the country? If I give him bail, the press, who are present, will have a headline screaming ‘JUDGE GRANTS BEAUTY ROBBER BAIL’. Can you imagine? This is a new insult that our people are being subjected to by these rampant criminals. When women cannot sit under the dryer in peace it is time to take a stand. As far as I am concerned there will be no bail for you. You must feel a good taste of the consequence of such stupidity.”

You have been asked by the attorney who made the application to do a draft opinion as to the correctness in law of the judge’s response.

Draft the opinion.

QUESTION 2

- (a) Roger Rebel was charged with the offence of misprison of felony. On the day of his trial he was not present, not having been brought from the local prison. When the officer in charge of transporting prisoners to court was asked why he had not been brought, he informed the court that Roger was in the habit of not answering when his name was called to go to court. The judge then said:

“Really? Well I am trying this case now and when I am finished it won’t matter whether he answers or not.”

Roger’s counsel rose and urged the judge to grant an adjournment, especially since there had been occasions when Roger had been ill and unable to answer. He directed the judge to one particular mention date when the file revealed that he was absent from court because he was suffering from high blood pressure and was unable to stand upright.

With the comment that *“everyone is under pressure”*, the judge empanelled a jury and ordered counsel to ask questions of the witnesses. Roger was convicted and sentenced to three years imprisonment, suspended for three years.

His attorney asks for your opinion as to whether:

- (i) the judge is correct in law to commence the trial in the absence of the accused in these circumstances; and
- (ii) there are any other appealable issues.

Prepare the opinion.

- b) Obidiah Crock was arrested and charged with malicious destruction of property. At his trial the first witness for the prosecution, Adassa Brown, gave evidence that she had been given notice to quit her house which was owned by him. She was unable to find alternative accommodation and so had been unable to leave. Without warning, one

night, huge stones were thrown at her house, smashing windows and destroying other property outside. This continued over a period of three weeks. Whenever help arrived no one was able to see any stones in the yard. The second witness gave evidence that Obidiah had been buying large blocks of ice at the ice factory in the district and had told him that he was going to make sure Adassa left the house.

The trial judge, on hearing this, asked counsel to attend his chambers and explained that those persons who practised “black arts” would stone houses in the night with chunks of ice. The ice would melt, creating the impression that it was “spirits” that were becoming violent, as no physical sign of the stones remained, come daylight. He advised Obidiah’s attorney that his client should plead guilty.

When they returned to court, the attorney spoke briefly to Obidiah. He was asked to plead again and reluctantly pleaded guilty.

You have been approached in your capacity as an attorney to give an opinion whether it is allowable in law for counsel and the judge to have discussions and make decisions in secret?

Prepare the opinion.

QUESTION 3

- (a) Scurry Brown, a taxi driver, was indicted for the rape of a woman who had hired him to drive her to the hospital, where her boyfriend had been hospitalized. The society was outraged when the press carried the story. People gathered in huge numbers when the matter came before the court for the first time. The press published stories daily for months leading up to the trial date. One typical headline read:

“YES, GIVE HIM A FAIR TRIAL; THEN HANG HIM”

When the matter came up for trial, counsel for Scurry sought an adjournment to examine the jury list and the basic information about the jurors, such as their occupation. His application was refused by the trial judge. As each juror came into the box to be sworn, Scurry’s counsel attempted to question the juror as to his prior knowledge and views of the case. He was not permitted to do so. Scurry was convicted.

He wishes to appeal. He believes that if it were not for these rulings he would have been acquitted.

Advise his counsel.

- (b) Marcus Boorman was on trial for the offence of wounding with intent. The prosecution evidence was that, while at a dance, he became embroiled in a fight over an estranged girlfriend who he saw in the arms of another man. Sometime around 9:00 pm that night he stabbed the man and ran. During his evidence he said that the witnesses were all lying since he had been at home all night and did not go to the dance at all.

After the defence closed its case, the prosecution applied for and was granted permission to call the mother of the accused. She gave evidence that the accused was not at home for most of the night.

Counsel wishes your advice as to whether the prosecution is allowed to call a witness after the defence has closed its case.

Advise counsel. Give reasons.

QUESTION 4

- (a) At a trial for the offence of robbery, the defence was served with an indictment containing the names of 11 witnesses. The prosecution called 7 of their witnesses, and then announced to the judge that they were closing their case. Counsel for the defence complained that 4 of the witnesses on the indictment were left to be called and asked the judge to direct that they be called because it was important for the defence to question them. The judge refused. The accused was convicted.

Defence counsel wishes to appeal.

Advise him as to whether the ruling of the judge in response to his request provides him with a ground of appeal and why.

- (b) Percy Swivel, along with 4 others, was on trial for the offence of robbery. The allegations against him were that on February 5, 2012, he, along with 4 other men, emerged from the shadows of a lonely street and robbed a couple of their money while they were walking down the street. The witnesses gave evidence that they were certain of the identity of the other 4 men but that they could not be absolutely sure of the identity of the accused because they saw him for less than a second.

The judge refused a no case submission on the question of identification but omitted to mention anything about the weakness of the identification in his summation.

At the end of the summation, counsel for the prosecution invited the judge to address the issue of weaknesses in the identification of Percy before sending the jury to deliberate. The judge scoffed at the invitation. Percy was convicted.

Advise whether this omission provides a basis in law for an appeal and why.

QUESTION 5

Jeremy Clammy was charged with 54 counts of fraud involving the systematic siphoning off of funds from the Government agency responsible for poor relief. The matter was tried on indictment and a jury empanelled. After the opening by the prosecution, defence counsel rose and pointed out to the judge that, based on what had been outlined, the prosecution seemed to have begun a case that could not succeed, bearing in mind certain recent amendments to the appropriate legislation.

The judge agreed and instructed the prosecution to offer no further evidence as it was clear that the case could not reach a successful conclusion. The prosecution then offered no evidence and the jury returned a formal verdict of not guilty.

Four weeks later, Clammy was rearrested for the same offence under a different section of the legislation. His attorney is convinced that since he had been acquitted he cannot properly be tried again on the same facts.

Advise him. Give reasons.

QUESTION 6

Leviticus Brigade was charged with unlawful wounding. The allegations against him were that he beat up his sister, a paraplegic confined to a wheelchair, in a dispute over the use of a computer. He pleaded guilty to the charge. On the request of counsel, a community assessment report was ordered and the information from all concerned showed that this was a very uncharacteristic act on his part. There was an antecedent report which showed that he had no previous convictions. His attorney provided the judge with cases that showed that

sentences for this offence have been between 18 months and 10 years. In his submission the attorney urged the judge to sentence him at the lower end because of the guilty plea, the favourable community report and the fact that he had no previous convictions.

In sentencing, the judge said:

“Yes counsel I have heard you. Stand up sir. Your counsel has spoken fervently on your behalf. Now listen to me. All of this nice talk and deep philosophy surrounding sentencing does not apply to a coward like you. The person you beat up is a disabled person, your sister. As far as I can see rehabilitation is impossible for someone like you. All the social workers, psychiatrists and whomever cannot tell me differently. I therefore sentence you to 10 years at hard labour for this absolutely disgusting act.”

Advise whether the judge applied the correct principles to the act of sentencing, giving reasons.

QUESTION 7

You appear for Nana Dixon. He is charged along with Skarlet Finch, Toyota Crank, Spliffy Blake and Mohinder Ming, on a single indictment containing 6 counts of armed robbery and 2 counts of wounding with intent. The allegations are that Nana Dixon entered the campus of National University at around 12 midday on the 12/12/2012 and robbed 6 items of jewellery from persons eating in a campus restaurant called “Dozens”. Skarlet Finch, at around the same time, was on the campus but a considerable distance away, robbing some footballers of 6 footballs and some gear.

At about 4:30 pm the same day, Mohinder Ming and Spliffy Blake were at the north of the campus, in one of the halls, beating up some students who had jeered them at a dance the night before.

Toyota Crank was held in the Faculty of Agriculture at 8:30 pm with 6 specimens of ganja tissue culture which had been prepared for research purposes.

There was no evidence that these accused knew each other before.

You are concerned that the charges seem duplicitous. You mention this to your colleagues who appear for the other men but they seem uncertain.

Prepare submissions on this issue, and any other, for presentation to the court.

QUESTION 8

Vernon Vanda was convicted of murder in 2006. He appealed within the time specified in the law but the appeal did not come up for hearing until 2015. There were two reasons for the delay. The first was that the registry was unable to find the transcript of the trial. The second was that a witness had turned up in 2014, who gave a statement to the attorney claiming that Vernon Vanda could not have committed the murder. He claims to be a witness to the murder and can attest to the fact that it was another man who did the killing.

An application for fresh evidence was filed. You appear, along with senior counsel, Cataleya Bloomwell, for the appellant.

The matter was fourth on the list of matters for hearing in the week it came up. One of the judges of the court of appeal commented, just before scheduling the hearing for the next day, that it would be useful if your team prepared submissions for the court on the principles to be applied in deciding whether to order a new trial, should that possibility arise.

Your senior counsel has asked you to:

- (i) prepare the submissions on the law applicable to the ordering of a new trial; and
- (ii) outline the principles applicable to the reception of fresh evidence by the court.

END OF PAPER