

**COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2017**

**CRIMINAL PRACTICE AND PROCEDURE**

**(AUGUST 00, 2017)**

**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. Erasable pens are not allowed.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

### **QUESTION 1**

Eva Boop attends your chambers and explains that her 20-year-old son, Adam Boop, was taken into custody by the police a week earlier, and has not been brought before a court. Eva pleads with you to secure his release.

Explain the steps you will take to secure his release, including reference to the legal basis, procedure and required proof.

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### **QUESTION 2**

Matthew, Mark and Luke are jointly charged for possession of cocaine and importing cocaine into your territory. The drug was hidden in the hull of a yacht, before it left a neighbouring territory and was discovered at the main port in your territory. The yacht is registered in your territory and was sailed by Matthew and Mark.

At all material times Luke remained in the neighbouring territory and had to be extradited to your territory to face trial. He claims that your territory lacks jurisdiction to try him.

You appear for the prosecution and the Court asks you to prepare written submissions.

Prepare the submissions.

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### **QUESTION 3**

At various stages of a trial, a number of issues arose for consideration.

You are the legal clerk to the judge on Assizes/Circuit and your advice is sought on the following:

- (a) Lassuns, who is charged with murder, applied for public assistance and the authorities assigned Anderen Wegen, a criminal lawyer of 15 years' experience. Wegen asked the authorities to pay for a defence expert to advise on the autopsy, dental and the DNA reports, but the request was refused for lack of funds. Wegen asks the judge to direct the State to provide funds.
- (b) The prosecution retained Andreas Pourani, QC. Lassuns fired Wegen and insisted that, *"My legal aid lawyer must be a QC too!"* The legal aid authorities have refused this request but Lassuns is adamant. The judge wants to proceed regardless.
- (c) At this stage of the trial for the closing speeches, Lassuns, who had been on bail throughout, does not show. His attorney-at-law advances no reasons for his absence. The judge wants to proceed.

Advise.

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### **QUESTION 4**

- (a) When the jury in charge of Francesca's murder trial was asked for the verdict, the foreman responded, *"Guilty of murder, not guilty of manslaughter"*. Manslaughter had not been left for the jury's consideration. What should the judge do?
- (b) Louda is acquitted on a charge of murder. You are employed in the prosecutor's office and have been asked to opine as to whether a charge of conspiracy to murder against Louda may now be properly brought. Give your opinion.

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## QUESTION 5

Sei Selbst was indicted in the Supreme/High Court for rape. After the jury had retired for two hours and fifteen minutes to consider their verdict, they handed a note to the jury officer for the attention of the judge. The note read that they had arrived at a majority verdict of not guilty. The judge had not given a majority direction. Having read the note, the judge instructed the jury officer to tell the jury that they should continue their deliberations until they had reached a unanimous verdict.

Five minutes later, the jury sent a second note saying that they would like further explanation of something the judge had said in his summation. The judge directed the jury officer to advise the jury that, *“He could only give a further explanation on legal issues as the facts are for them”*.

The jury thereafter returned a unanimous verdict of guilty.

The next day three jurors attended court and informed the judge that they had not understood the word “unanimous” and were not in agreement with the verdict.

The judge nonetheless proceeded to sentence.

The communications during deliberations were not made public, and counsel for the defendant was not made aware of them until after the sentence.

Comment on:

- (i) the judge’s treatment of the communication during deliberations; and
- (ii) whether an appeal may be properly grounded on the three jurors’ post-verdict revelation.

## **QUESTION 6**

Linky and Lanky were indicted for murder. On February 10, 2017, the jury found Linky guilty of manslaughter and Lanky guilty of murder. Linky was sentenced to be imprisoned for life, and Lanky to death. On February 13, 2017, Linky filed a notice of appeal against conviction and sentence.

On February 15, 2017, counsel advised Linky against pursuing the appeal.

Based on the advice, two days later, Linky filed with the Registrar a notice of abandonment of his appeal. However, having been advised by another counsel that he had a good ground of appeal, Linky, on February 18, 2017, sent another notice of appeal to the Registrar in which he stated that he wished to reopen the appeal and was therefore withdrawing the notice of abandonment.

On March 2, 2017, Lanky filed a notice of intention to apply for an extension of time within which to appeal his conviction and sentence.

They both seek your advice as to the likelihood of their appeals being heard.

Advise Linky and Lanky.

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## **QUESTION 7**

Sonny Salvo is on trial for the offence of wounding with intent. After he was arraigned, the jury was selected and he was put in their charge. It was brought to the attention of prosecuting counsel that the foreman of the jury knew Sonny Salvo to be a fellow who hung out with gang members and frequented places reputed to be their hideouts.

Further when it was time to retire to consider the evidence and render a verdict, juror number five told other jurors that it was his birthday. He asked the registrar of the court to allow him to make a phone call to his wife. This was allowed. He then pulled out a cellphone, which he had on him all during the trial, went into a private bathroom and made the call to his wife.

When juror number five returned to the jury room, the entire panel continued deliberations. When they got to difficult points of law they recalled the judge's directions and followed them. However juror number three took out a Ouija board given to her by Miss Intuitive, a noted psychic. All the jurors gathered around and asked several questions of the Ouija board regarding the trial. When asked whether the accused was guilty or not, the Ouija board indicated not guilty.

After deliberating for a further three hours, the jury came back with a verdict of guilty as charged.

Sonny Salvo was sentenced to five years' imprisonment with hard labour. His attorney-at-law, Mr Donovan Diligent, has now learnt of what transpired in the jury room.

Advise Mr Diligent as to any irregularities that may have taken place with regard to the trial and whether or not these irregularities can ground an appeal.

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### **QUESTION 8**

Cornelius Cobb, a 21-year-old vendor, pleaded guilty to the offence of manslaughter arising out of a fight which took place at a night club. He was sentenced to 18 years' imprisonment, which was two years below the current maximum sentence being given for the offence. He had already spent three years in custody before the matter came up for trial.

Upon pleading guilty, his attorney-at-law asked the court to order a report on Cornelius' general status and character. The judge refused, saying that this was the final day before his leave commenced so he would have to sentence him that day.

Counsel asked to be allowed to make a plea in mitigation. The trial judge declared that it was not

necessary to hear from him. He then stated, *“I am taking leave after 43 years in this work. I have been hearing this type of case before you were born. I live here, just like you. I know every type of person, all the cultural practices and the goings-on and I can sum up a situation better than most. I know when to send a message and how to protect our society.”*

Advise Cornelius whether he may appeal successfully against the sentence of 18 years. Give reasons.

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**END OF PAPER**