

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2018**

CRIMINAL PRACTICE AND PROCEDURE

(AUGUST 00, 2018)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Robbins, a constable, was walking in a busy shopping area. He was dressed in plain clothes. He noticed two young men whispering to each other as they watched a young lady pass by them. One of the men, Monty Charming, went up to her and began speaking to her.

While Charming spoke with the young lady, the other young man, Ranny Knose, crept up behind her and attempted to remove her purse, which was sticking out of her handbag.

Constable Robbins ran in their direction and held on to both Charming and Knose. Both men struggled with the officer and Knose managed to escape.

At the station, Charming was searched. Two cell phones and several items of jewellery were taken from him. He was charged with attempted larceny/theft and resisting arrest.

During the trial, Charming gave evidence that he was actually making 'a pass' at the young lady and had no idea that Knose had 'something else on his mind.'

He was acquitted of attempted larceny/theft but convicted of resisting arrest.

Charming retains the law firm at which you are junior counsel, and seeks advice. He wishes to appeal his conviction for resisting arrest. He believes that the officer was wrong to arrest and search him. He asserts that his acquittal for the attempted larceny/theft shows that the officer had no cause to arrest him. Further, that he resisted the arrest because he had no way of knowing that Constable Robbins was a police officer, as he was not dressed in uniform, nor did he declare himself to be an officer.

Draft an opinion for your senior as to whether Charming has any good ground(s) of appeal.

QUESTION 2

Answer both (a) and (b)

- (a) Jack Spratt is a 21-year-old mechanic from the district of Polo. His mother, Eva Spratt, has come to your office seeking advice. She explains that, a week ago, the police came to the district of Polo and arrested five young men, including her son, Jack. She said that the police officers claimed that the five young men were wanted for questioning in relation to a variety of offences.

She tells you that she has been to the police station on several occasions to visit Jack, but has not been allowed to see him. The police have refused to provide her with any information about Jack, except that he was being held in custody in the 'lock up' there.

She was informed that the officer, who had conduct of the matter(s) in relation to Jack, had an emergency and would be out of office for two weeks. She was advised to return to the station in two weeks.

Mrs. Spratt has not been allowed to provide food for Jack, who is a vegetarian, nor to bring him personal effects. The police have also refused to accept the medication for his asthmatic condition.

Mrs Spratt wishes to be advised:

- (i) whether the court can instruct the police to deal with Jack's matter(s) immediately; and
- (ii) of the different ways in which the court may deal with Jack's status, if he is brought before the court.

Draft a legal opinion to be presented to your senior to address Mrs Spratt's concerns in (i) and (ii).

- (b) Fisher Furnace was charged with the offence of larceny/theft. The allegations against him are that on April 1, 2018, he stole 34 potted plants from the Bright Start plant nursery. The nursery had been established as an institution to train disabled persons for a career in horticulture. The new watchman for the nursery saw Furnace taking the plants and

reported him to the police. The police went to his home, arrested him and retrieved the plants.

On Furnace's first appearance in court, his counsel made an application for bail on his behalf. He informed the court that the plants actually belonged to Furnace, who had just resigned as watchman for the nursery. While working at the nursery, he had legitimately collected a variety of plants in order to start his own business.

He further informed the court that Furnace is 50 years old. He was born and raised in the community in which he lives with his wife and adult children. He had never been in trouble with the law before.

The judge, after considering the application, stated:

"...a likely story. I can see the headlines now, 'Bail granted to man who robbed disabled persons'. I can hear the public saying 'any and everybody can get bail in this country'. As simple as it looks, I consider this a serious offence. I suspect that a judge can never be wrong to send a message to anyone who preys on disabled persons. Such a person should never be granted bail, so soon. Bail denied. Have a taste of the consequences of such an awful act."

You have been asked by the counsel to whom the file is assigned, to prepare a draft opinion as to the correctness in law of the judge's reasoning in denying the bail application.

Draft the opinion.

QUESTION 3

The community of Kento has been experiencing a series of break-ins and larcenies/thefts over the last year. Boo Radley, a 23-year-old student of Business Studies at the University of Kento has been arrested. The allegations against him are that he broke into the local government

storehouse of hurricane supplies and then stole 200 tins of sardines, 100 of which were found at his home.

On one of the dates on which the matter was mentioned, the prosecutor informed the court that since Boo's arrest, the series of break-ins and larcenies/thefts have ceased.

At the first trial date, Boo pleaded guilty to both breaking into the storehouse and stealing the sardines. In his plea in mitigation, his counsel indicated that this was his first conviction and that he had been in custody for six months. He asked the judge to order that a social enquiry/investigation report be ordered and submitted before sentencing.

The judge refused and stated:

".. The court's term is coming to an end today, so I am sentencing him now. In any case this is a small society. I have as much of a sense of a young man like this as I will ever have. No report can add to that. In addition, I will not need anything more than the details I already have. Anything else will be a waste of time. The maximum sentences for these offences are seven years and ten years respectively. I therefore sentence him to six years and nine years respectively. I note that the rampage seems to be over. I am sending a message, the lesson must be learnt."

Boo's counsel wishes for your advice as to whether there is any ground on which to appeal the judge's sentences.

Advise him.

QUESTION 4

Merri Moore was convicted of manslaughter in January 2018 and sentenced to ten years' imprisonment, which he is presently serving. Saddy Brown pleaded guilty to assault in February 2018 and was sentenced to three years' imprisonment, which he is also presently serving. They are both being housed in the same prison and share a cell.

Merri and Saddy each filed a 'Notice to Appeal' in respect of their convictions within the correct time limitations.

Recently, Merri had a discussion with inmates from an adjoining cellblock. They told him that the current practice of the Court of Appeal is to increase the sentences of persons who are convicted of manslaughter, if they lose their appeals. Without consulting his counsel, Merri immediately sent in a 'Notice of Abandonment' to the Court of Appeal.

Saddy, who was not part of this discussion, also decided that he too would abandon his appeal. He was of the view that if he allowed the time 'to run' normally, he would be out soon. He also sent in a 'Notice of Abandonment'.

When counsel for Merri, came to consult with him, Merri learnt that what the prisoners had told him about the current practice of the Court of Appeal, was not true.

Saddy, who had no counsel of his own, took the opportunity to consult with Merri's counsel, who was of the view that three years was excessive for a guilty plea for the offence of assault. Furthermore, having heard Saddy's account, Merri's counsel was convinced that the court should not have accepted Saddy's guilty plea. Both Merri and Saddy immediately sent letters to the court seeking to withdraw their 'Notices of Abandonment'.

Advise both Merri and Saddy whether it is likely that the court will permit them to withdraw their 'Notices of Abandonment'. Give reasons.

QUESTION 5

Casual Causewell was charged with wounding with intent arising out of a fight that took place on a construction site two years ago. His matter had been set for trial on five different occasions. On each occasion, Casual was present, but for one reason or another, the matter was adjourned and set for 'priority' on the next date.

After the fifth adjournment, Casual hinted to his counsel that he was 'running out of money' to pay the fare to come from his home in the country, to court.

On the next occasion when the matter came up, Casual was absent. His counsel explained that he might be having financial difficulties getting to court. The judge decided to adjourn the matter for the day for Casual's counsel to attempt to get in touch with him. The following day, Casual's counsel reported that he had been unable to contact him.

The judge announced that he would begin the trial, and instructed Casual's counsel to conduct the defence.

Casual's counsel indicated that he would prefer not to begin the matter. However, the judge told him that if he refused, he would report him to the disciplinary body. Casual's counsel complied with judge's instructions.

Casual appeared at court during the course of the recording of the evidence of the third witness for the prosecution. Through his counsel, he apologized, indicating to the court that he had just been able to borrow the money to come to court and that there is no phone service in his area.

After the evidence from the fifth witness was taken, the judge adjourned the trial and called both counsel into chambers. In chambers, he indicated to Casual's counsel that, in his view, the matter was heading for a conviction and that it might be smart for him to talk to his client. He further indicated that, whatever sentence he gave would not involve a period in custody.

Casual's counsel returned to court and spoke to Casual, who, with some reluctance, agreed to plead guilty. Casual was sentenced to three years' imprisonment, suspended for three years.

After the case was finished, Casual indicated that while he was relieved not to be sent to jail, his family had filed for him to get residence abroad, and that the conviction would affect his chances.

Advise Casual's counsel on the issues that have arisen and whether there is any good basis for him to appeal his conviction.

QUESTION 6

Sweetie Nervosa seeks your advice. She informs you that just two days earlier, she appeared in the Parish /Magistrate's Court and pleaded guilty to the offence of unlawful wounding.

Because of the prior long weekend, the courtroom was packed with other defendants. She was of the view that, as a result of this, the parish judge/magistrate seemed very impatient to get through all of the matters.

She pleaded guilty, but wanted to explain to the parish judge/magistrate that she had only been defending herself. Before she could speak further, the parish judge/magistrate stated:

"Come back for sentencing next week. Next matter please."

In relation to the charge, Sweetie explained to you, that the incident arose at a dance where she and other girls were dancing with a view to obtaining an offer to be in a music video. Other girls were taking exception to her dancing, and one of them deliberately bounced against her, causing her, to fall. While she was still on the ground, she saw another girl advancing towards her with what appeared to be a knife. She took up a stone, hit her, got up and ran.

Advise Sweetie whether it is possible to change her plea. Give reasons.

QUESTION 7

After a manslaughter trial lasting one week, the jury retired at 11:45 am to consider its verdict. At 1:30 pm the jury clerk delivered lunch to the jurors.

He noticed that all of the jurors were talking on their phones.

The jury clerk left and reported the matter to the judge. The judge asked the jury to return to the court, and there, instructed the jurors, that talking on their phones was not allowed.

The foreman explained that they all had to make arrangements to pick up their children and family members, since it appeared that they might be considering their verdict during the time that they would have done the pick-ups.

The judge asked each of them for their phones and sent them back to the jury room to continue considering their verdict.

The jury returned in ten minutes, delivered a unanimous verdict of guilty, and was discharged.

Immediately after the jurors were discharged and had dispersed, one member returned and spoke to the jury clerk. She told him that the members of the jury brought in the verdict after expressing their anger at the unreasonableness of the judge.

The jury clerk reported this exchange to the judge, the prosecutor and to defence counsel. The judge stated that it was now too late to do anything.

Advise defence counsel whether there is/are any good ground(s) of appeal.

QUESTION 8

Answer both (a) and (b)

You are a student at the Norman Manley Law School and are currently working as a volunteer in the clerks' office of the Parish/Magistrate's Court. You have been assigned to assist the clerk of the court. She has asked for your opinion in the following two cases:

- (a) Silly Saloma, Debbie Kurt and Eulla England are all charged with offences, which occurred on the same day at 'Everything Store' located at Prince Mall in Angel District/Parish.

Saloma was found with two boxes of gold studded dentures from the store in the pockets of her cargo pants as she attempted to leave the store. She was arrested by the security guard at the front of the store at about 12:35 pm.

England and Kurt were arrested at about 12:40 pm. During a fight with each other in the store, England's wrap-around-skirt unraveled, revealing 17 packs of weave from the store hanging from a belt around her waist.

As the security guard tried to part them, Kurt's handbag fell and five bottles of Scalp Soothers, from the store, rolled out onto the floor.

All three were charged separately with the offence of larceny/theft. In addition, resulting from the fight, Kurt was also charged with assault occasioning actual bodily harm against England.

Explain whether the matters can be tried jointly, giving reasons.

- (b) Bolo Slush is on trial for wounding. The allegations against him are that on February 4, 2018, at about 11:30 pm, he beat up a bouncer at a strip club because the bouncer kept insisting that he should stop touching the exotic dancers while they were on stage performing. It is alleged that he punched the bouncer in the face several times and fled.

Slush gave evidence in his own defence. He stated that it was impossible for him to have committed the offence because he spent that night in the 'Krankenhaus Hospital' waiting room, where his girlfriend had been admitted for a minor operation.

The defence has closed its case.

The Crown did some quick investigations, and was advised that on the date in question, the hospital had closed the waiting room area from 9:30 pm, and that no one had been permitted to remain there.

Opine on whether the prosecution can apply to call a witness to give evidence about the closure.

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