

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2019

CRIMINAL PRACTICE AND PROCEDURE
(THURSDAY, AUGUST 08, 2019)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school **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

During a routine patrol of Downtown Gardens, Constables Hiss and Bisson, drove up to a popular bar and gambling house where a large crowd was gathered. The constables entered the bar and saw a man, later identified as Paul Badd, jump from the bar counter and kick another man, Wayne Bothersome, in the face.

The constables held onto Paul and arrested him for assault. Paul resisted the arrest, stating, *“But you don’t know what happened”*.

The constables took Paul to the police station where he was charged with assault and resisting arrest. While processing Paul at the police station, Constable Hiss realized that Paul is a resident of Hoggsbach, a nearby community, with a reputation for identity theft.

Constable Hiss and a team of police officers, along with Paul, went to Paul’s home in Hoggsbach where he resides with his grandmother. They conducted a search of the premises for evidence of identity theft without a warrant or Paul’s consent.

The constables seized four cell phones and a laptop. They searched the devices and found a number of documents with names and addresses of foreigners on them. Paul was charged for an identity theft offence.

Paul was tried for the offences of assault and resisting arrest. He was acquitted of the offence of assault on the basis of self-defence. However, he was found guilty of the offence of resisting arrest.

He is awaiting his trial on the identity theft offence.

Paul wishes to appeal his conviction for the offence of resisting arrest, on the ground that, since he was acquitted of the assault offence, he should not have been found guilty of the offence of resisting arrest.

Paul also requests advice on the lawfulness of the charge for the identity theft offence which he faces. He is contending that the search and seizure of his property that resulted in the charge, were unlawful.

Advise Paul.

QUESTION 2

Alvarez Agoda, from the rural district of Black Mango Gap, has come to your office seeking legal assistance with an urgent matter regarding his nephew, Jimmy Yush, a 22-year-old unemployed DJ. Alvarez tells you that, three weeks ago, policemen from a police station outside of the district, came into the area and took Jimmy and four other young men into custody.

Relatives of the young men went to the Black Mango Gap Police Station to enquire about their detention and were told that they, the Black Mango Gap police, were not even aware that policemen from outside the area had been in the community conducting operations. The police officers promised to find out what was happening and to inform the relatives. Despite repeated visits to the station, the relatives have been unable to get the information promised.

One of the young men, who had been detained at the same time as Jimmy, has been released. He informed Jimmy's relatives that Jimmy is at a remand centre in the capital city. He also told them that two of the other young men have been charged, but not Jimmy, and that Jimmy, who was beaten by the policemen, is complaining of severe pains and is having episodes of shortness of breath.

Jimmy's relatives, including Alvarez, have visited the remand centre and confirmed that he is there. The police officers however, have not allowed them to speak with him, have refused to give them information about him and are not allowing them to bring him food or medicine, or to give them an update on his health.

- (i) Outline the essentials of the application to be made to have the court enquire into the lawfulness of Jimmy’s detention as well as the likely orders the court can make.
 - (ii) Outline the contents of the Affidavit that should be filed as part of the application.
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QUESTION 3

Riva Bottom is charged with receiving stolen goods and resisting arrest and is in custody. He was found with a motorbike which was reported stolen over six months ago. Riva insists that he had the bike on loan from a friend named Shawn. He has given the police Shawn’s name and address but the police say that they are unable to find him.

The Parish Court Judge/Magistrate refused to grant Riva bail. As part of the reason for her decision, she said:

“.....It must be remembered and cannot be overemphasized that the right to liberty is not absolute. And what of the right to property? Is it not just as important? What if it were a car, or a boat or even someone’s house? We keep sending the wrong messages to our young men and the rest of society. I see nothing in the arguments I have heard from you that justifies my granting the accused man bail. Despite the ten minutes I limited you to, you spoke for over 15 minutes. Now I do not need more than five minutes to tell you that your client will be remaining where he is. Anything else, counsel?”

Critically analyse the reasoning of the Parish Court Judge/Magistrate in refusing to grant bail to Riva Bottom.

QUESTION 4

Hottie Hottie's eleven-month-old son died in a fire on February 21, 2017. At the time of the incident, her son was home alone. Hottie had left him there to attend a dance.

She was convicted of manslaughter and raises these issues with you:

- (i) She had wanted to plead guilty to infanticide and the prosecution was prepared to accept that plea, but the judge refused to allow the plea to be entered and directed that the trial should commence.
- (ii) On the morning of the trial, Hottie's counsel did not appear. He told Hottie that he was not appearing because he was participating in a 'sit-out' by the private bar protesting the non-payment of legal aid fees due to counsel.

The trial judge refused to grant Hottie an adjournment. He gave as his reason for refusing the application that, it was the fifth date on which the matter had been set for trial to commence, and that it was Hottie's fault why the trial had not begun on the four earlier dates.

Hottie had to represent herself at trial.

Prepare an opinion on Hottie's chances of success on appeal.

QUESTION 5

At Kevin Klauss's trial in the Supreme/High Court, the following took place: Stan, a witness whose name was on the back of the indictment, was not called by the prosecution. Just before the prosecution closed its case, counsel for the defence enquired of prosecuting counsel the reasons for not calling Stan as a witness.

Prosecuting counsel stated in response that *"The witness was not reliable."* After the defence closed its case, His Lordship, The Honourable Mr Justice Dreamy, decided to call Stan, who provided damning evidence against the accused, Kevin.

Kevin was convicted.

Kevin wishes to appeal and is seeking your advice on whether he has any good basis for an appeal.

Advise Kevin, giving reasons.

QUESTION 6

Dark Vader was convicted of robbery of household articles from an appliance store. The store clerk, who knew him before, gave an eye-witness account of the robbery.

Dark's counsel suggested, in his cross-examination of the investigating police officer, Corporal White, that he, Dark, had told him that he had been at the Weary Road Police Station, 30 miles away at the relevant time. Corporal White denied that he was told this.

Dark gave evidence that he was in fact present at the Weary Road Police Station at the relevant time because of an incident with a policeman named Sergeant Wutz, who is stationed there, and with whom he spoke.

After the close of the case for the defence, the prosecution was allowed by the trial judge to call Sergeant Wutz to give evidence in rebuttal.

Sergeant Wutz denied seeing Dark or speaking to him at the police station. Dark was convicted and sentenced.

Dark wishes to appeal.

Advise Dark.

QUESTION 7

Answer both (a) and (b)

- (a) Snape Gringwoll is indicted for the offence of arson before the High/Supreme Court. He is representing himself. He has exhausted his peremptory challenges. He was reminded by the trial judge that it was open to him to challenge any of the persons called to the jury box for cause. He wants to know on what basis he may challenge for cause.

Advise Snape.

- (b) Rye Weathley, on arraignment for rape, stood mute. A jury was empanelled to determine whether he was mute of malice or mute by visitation of God. The jury found the latter.

The issue of Rye's fitness to plead now arises.

Defence counsel wishes to be advised as to the course to be taken to determine this issue and as to the basic criteria of the test of fitness to plead.

Advise defence counsel.

QUESTION 8

Answer both (a) and (b)

- (a) On the trial of Lark Goodson for rape, and after the jury had retired to consider their verdict, Boysie, a juror, left the jury room with the consent of the other jurors and made a telephone call from an office a few feet away. He was seen by the jury clerk and was prevented from rejoining the other jurors. The judge discharged him and the trial proceeded to verdict.

Lark was convicted. He wants to know whether the juror leaving the jury room in those circumstances, and the subsequent discharge, amounted to a material irregularity.

Advise Lark, giving reasons.

(b) Barney Barnes was charged with wounding with intent. The jury, after they had retired, returned and said they would like further information on the distance between Barney's house and the scene of the alleged offence. In response, the judge said, "*If both counsel are minded to agree an answer, I do not see why not.*" After conferring with prosecuting counsel, defence counsel rose and gave the agreed information to the court. The jurors then returned to the jury room.

Barney was convicted. He wants to know if he has any good basis for appealing.

Advise Barney, giving reasons.

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