

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2010

CRIMINAL PRACTICE AND PROCEDURE

(WEDNESDAY, AUGUST 18, 2010)

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 ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

On January 10, 2010, Mr. Stone missed from his store three expensive gold rings. The police were called in. On January 24, the police acting on information received, obtained a search warrant and went to the home of Stolle. The warrant was read to him and thereafter the police proceeded to search the room occupied by Stolle and his companion Miss Princess. They found three gold rings.

They were questioned about the rings. Miss Princess told the police that one of the rings was given to her by Stolle. In answer to a question put by Constable Quiz, Stolle said he bought the rings whilst on King Street from a man whom he did not know. When asked how much he paid for them he refused to answer. The rings were positively identified by Mr. Stone as the rings he had missed from his store. Stolle and Princess were arrested and charged.

Draft the indictment to be presented in the Supreme Court/High Court. Give brief reasons for your draft.

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## **QUESTION 2**

Furey and Frank were charged on an indictment containing one count of wounding with intent. Each pleaded not guilty to wounding with intent, but guilty to the lesser offence of unlawful wounding.

The prosecution did not accept Frank's plea of guilty to the lesser offence.

The trial judge approved the acceptance of Furey's plea and the plea was entered. However, upon hearing the facts alleged, during the opening, the trial judge changed his mind and directed that the joint trial of Furey and Frank proceed on the indictment for wounding with intent.

Furey was convicted of wounding with intent. Frank was acquitted of wounding with intent. The lesser offence of unlawful wounding had not been left to the jury.

On the basis of Frank's earlier plea of guilty to unlawful wounding, the judge ordered that the count of unlawful wounding by Frank be added to the indictment. That was done. The judge then imposed on Frank a fine of \$5,000.00 and sentenced Furey to two years imprisonment at hard labour.

Both Furey and Frank wish to appeal and seek your advice.

Advise them of their chances of success, giving reasons.

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### **QUESTION 3**

On April 10, 2010, John was convicted of murder committed in September 2008. He had shot to death two men with whom he had had a quarrel earlier in a bar near his home.

After the verdict was pronounced, no allocutus was pronounced by the clerk.

Counsel for John then addressed the court to the effect that he wished an adjournment to call certain vital evidence prior to sentencing.

The trial judge refused his application and immediately sentenced John to “suffer death in the manner authorized by law.”

Counsel seeks your advice on –

- (i) the effect of the absence of the pronouncement of the allocutus;
- (ii) the validity of the trial judge’s action; and
- (iii) the possible grounds of appeal.

Advise him, giving reasons for your advice.

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#### **QUESTION 4**

The jury retired to consider their verdict in a trial of Carl for rape.

The trial judge recalled the jury after a period of forty (40) minutes and gave them directions on good character and further directions on alibi. The jury retired again, for a second time.

After twenty-five (25) minutes the jury returned, and by a majority verdict of 5 to 2, Carl was found guilty. He was sentenced.

Carl consults you for advice on the validity of his conviction.

Advise him giving your reasons.

## **QUESTION 5**

- (a) Mello was convicted on an information/complaint alleging that he had permitted his premises to be used “for the purpose of smoking ganja or dealing in ganja” and ordered to pay a fine of \$10,000.

The relevant statute makes it a summary offence if anyone allows his premises to be used for the smoking of ganja or for dealing in ganja. Counsel for Mello is of the view that the information/complaint is bad for duplicity. He wishes to appeal. Advise him giving reasons.

- (b) The police conducted a raid on premises owned by Smokey. A search of his person revealed a quantity of ganja in one of the pockets of his trousers. In a room to the side of the premises occupied by tenants, Mr. and Mrs. Saint, the police found ganja in an old chest of drawers. There was no communicating door between the room occupied by Smokey and that of the Saints. Smokey was charged on one information/complaint and the Saints were charged on a different information/complaint each for the offence of possession of ganja.

The prosecution has applied to try both informations/complaints together. Counsel for the Saints objected. Advise the Magistrate giving reasons for your advice.

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## **QUESTION 6**

The applicant Punch was convicted of murder. The prosecution’s case from three eye-witnesses at the trial was that he, a security guard at a store, shot and killed the

deceased who was unarmed. The defence was that the deceased had attacked the applicant with a knife and he shot the deceased in self defence. Pamela, a cashier in the said store, gave evidence at the preliminary inquiry/committal proceedings supporting the defence's version of the indictment.

The prosecutor did not place Pamela's name on the back of the indictment. She was called by the defence.

It was argued by counsel for the defence that the prosecution should have been directed by the court to call the witness Pamela.

Advise counsel for the defence of his chances of success, on appeal, giving reasons. What are the obligations of counsel for the prosecution in respect of the witness Pamela?

Give reasons for your answer.

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### **QUESTION 7**

The appellant was convicted of murder. At the trial, his defence was an alibi. He gave evidence that at the relevant time he was at a night club and related an incident with a police officer Sgt. Sale at the night club. During the cross-examination of a witness for the prosecution, suggestions by counsel for the defence concerning the night club incident were denied by the witness.

After the close of the case for the defence, the prosecution applied to the trial judge to call Sgt. Sale to prove that he did not see the appellant at the night club, as the matter arose *ex improviso*. The trial judge allowed the application.

The appellant seeks your advice on his chances of success on appeal. Advise him giving reasons.

Would your advice be different if the incident in the night club was mentioned for the first time in the opening speech of counsel for the defence? Give reasons for your answer.

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### **QUESTION 8**

- (a) *“It cannot be too strongly impressed ... that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at the trial”* – Lord Russell, C.J., in ***R v Rose*** [1895-9] All ER Rep. 350. Discuss, with reference to current bail principles.
- (b) David and his friend were each charged with littering under the Clean Public Park Act. Each had tossed paper wrappers from buns they were consuming, onto the ground in the public park. Cons. Order requested them to take up the wrappers. They both refused. David said “The garbage bins were too far away.” Taken before the Magistrate, David was remanded in custody to appear the following day because, according to the Magistrate, he was “too lippy” to the policeman.

Both defendants were schoolboys and neither had been in trouble before. The maximum punishment for the offence was a fine of Five Hundred Dollars (\$500.00) or 7 days imprisonment.

- (i) Did the Magistrate have the power to deny bail to David? Advise David, giving reasons.
  
  - (ii) What is David's immediate recourse in order to gain his release?
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