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NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1991

CRIMINAL PRACTICE AND PROCEDURE

(Monday, May 27, 1991)

Instructions to Students:

- A) Time: 3 1/2 Hours
 - B) Answer FIVE questions.
 - C) In answering any question, a student 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.
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QUESTION 1

Pauline Rainford was going home from work in the early evening of September 20, 1990.

As she reached a bridge in the area of Rousseau Road, six boys came from the bridge, surrounded her, menaced her with knives and took away her handbag. Five of the boys went away but the sixth, the accused W., stayed on and was violent to her cutting her on her finger. The fact that he stayed on gave her an opportunity to be able to identify him.

She made a report to her father and described W. Her father went out and with the assistance of others held W.

Ms. Rainford identified W. Later that day, John B. was pointed out by her as one of her other assailants. John B. and W. were arrested and charged.

Draft the indictment to be preferred in the Supreme/High Court.

QUESTION 2

Archer and Selmes were indicted for murder. On January 10, 1991, the jury found Archer guilty of manslaughter and Selmes guilty of murder. Archer was sentenced to be imprisoned for life and Selmes to death.

On January 13, 1991, Archer filed a notice of appeal against the conviction and sentence.

On January 15, 1991, counsel advised Archer against pursuing the appeal.

As a consequence two days later, Archer filed with the Registrar a notice of abandonment of his appeal. However, Archer having been advised by senior counsel that he had a good ground of appeal, sent on January 18, 1991, 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 January 30, 1991, Selmes filed a notice of intention to apply for an extension of time within which to appeal his conviction.

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

Advise them.

QUESTION 3

At the close of the case for the prosecution at the preliminary enquiry in respect of a charge of murder preferred against Singh, the magistrate found that there was no or no sufficient evidence as to the cause of death or establishing that a prima facie case had been made out. He accordingly discharged Singh.

The Director of Public Prosecutions has since discovered further evidence which he considers material in establishing Singh's guilt. He also considers that the depositions disclose sufficient evidence of the commission of the offence of manslaughter. He is also determined that Singh must stand trial.

Indicate and discuss the steps and procedures that are available to the Director of Public Prosecution in achieving his objective and whether and to what extent he is likely to succeed.

QUESTION 4

J was indicted for murder. The evidence adduced at the trial was that J and five others abducted H on February 12, 1991. Later J shot and killed H. J and his party disposed of H's body and left the scene.

On their way back J met in an accident. His 'friends' abandoned him but he was rescued by a passer-by and taken to hospital. J made two statements to the police regarding H's death. The police also took a statement from another in the party responsible for H's abduction.

During the trial, the judge allowed the words "and others" to be inserted into the indictment immediately after J's name. The jury found J guilty. After they had reached their verdict, the judge allowed a further amendment to be made to the indictment so that a reference to the date "May 12, 1991" read "February 12, 1991".

J wishes to know whether the amendments had been properly allowed.

Advise him.

QUESTION 5

On March 10, 1990, Leon Jack severely wounded his wife Jane by inflicting several blows to her head with a hammer. On February 10, 1991, Jack was convicted and sentenced to fourteen years imprisonment for wounding Jane with intent to murder her. Jane died soon thereafter on March 21, 1991, as a direct result of the injuries she sustained at the hands of Jack. Jack was arrested on March 25, 1991, and charged with Jane's murder. He has since been committed for trial in respect thereof.

The Director of Public Prosecutions proposes to indict Jack for Jane's murder and informs you that Jack's Attorney-at-Law has already indicated that to indict Jack for murder will be misconceived because "no one ought to be punished twice for the same act."

Discuss the relevant issues that arise in this matter including:

- a) the Director of Public Prosecutions' proposal to indict Jack for Jane's murder;
- b) the observations made by Jack's Attorney-at-Law.

QUESTION 6

Consequent upon the leave of a judge/the Director of Public Prosecutions, Joe was committed to stand trial on two counts of burglary and robbery with violence respectively, arising out of offences committed on the same date but unrelated to each other.

He was accordingly indicted. The indictment was inadvertently not signed by the proper officer. On the day of the trial, Joe when arraigned pleaded not guilty to both counts. The prosecution thereupon applied for severance of the indictment and separate trials of the two counts on the grounds that they were improperly joined.

The defence submitted that the better course would be to quash one of the counts. The court ordered separate trials. A jury was then empanelled to try the burglary charge. Joe was convicted and sentenced. He is dissatisfied with his conviction and sentence and seeks your advice.

- a) Advise him.

- b) If instead the court did quash one of the counts as submitted by the defence and proceeded thereafter in like manner and Joe was convicted and sentenced, would your advice be any different?
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QUESTION 7

Answer a and either b or c:

- a) Write notes on the following:

- (i) the procedure when a child of tender years is called as a witness;
- (ii) the two basic methods of commencing criminal proceedings.

- b) Write notes on three of the following:

- (i) calling evidence in rebuttal;
- (ii) majority verdicts;

(iii) the laying of an information/charge;

(iv) order of speeches in the High/Supreme Court.

c) Write notes on:

(i) the procedure on information charging an indictable offence in the Magistrates Court;

(ii) Appeal from the Magistrates Court.

QUESTION 8

During the course of the trial of Ted who was charged with burglary and larceny, the jury sought and obtained permission to visit the house where the alleged burglary and larceny took place. Attorneys-at-Law for the prosecution and the defence did not object. The trial judge did not consider it necessary to attend.

At the said house, the jury asked certain questions of witnesses who had already given evidence to which they received answers. The jury thereafter returned to the court where the trial

was subsequently concluded and they then retired to consider their verdict.

Within one hour after their retirement, the jury sent a note to the trial judge requesting:

- (a) further information about two houses referred to in the evidence of the witnesses; and
- (b) a magnifying glass to assist them in looking at certain documents that were tendered in evidence.

The trial judge, by a note in reply, informed the jury that he could not furnish any further information about the houses and that they must deliberate only on the evidence adduced in court. He, however, instructed the Registrar of the Court to furnish the jury with the magnifying glass as requested.

The jury after deliberating for a further hour, convicted Ted. He was sentenced to 10 years imprisonment. Ted wishes to appeal his conviction and sentence and seeks your advice.

Advise him as to the merits of any such appeal.
