

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1992

CRIMINAL PRACTICE AND PROCEDURE
(Friday, May 29, 1992)

Instructions to Students:

- a) Time: 3 1/2 hours.
- b) Answer FIVE questions only.
- 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.

1992 Crisis M

Question 1

Jona and Batman were seen by Constables Alert and Quick running from a bank towards a motor car which they entered. Batman got into the driver's seat and Jona into the passenger's seat. As the car drove off, Alert called out "Police, stop". Jona put his head out of the left window, pointed a firearm at Alert and Quick who were some 16 feet away, and fired two shots at them. The car then crashed into another car. Jona and Batman ran from the car. Alert and Quick gave chase and as they did so, Batman spun around pointed a gun at the two constables and fired two shots at them. The police returned the 'fire', hitting Batman. Jona went to Batman's aid and both made good their escape. They were later apprehended. Charges were made against them.

Draft the indictment.

Question 2

O'Reilly pleaded guilty in the High/Supreme Court to counts 1, 2 and 3 on an indictment. He pleaded not guilty to the remaining two counts. His co-defendant pleaded not guilty to counts 3, 4 and 5 and the case was put back for trial.

At the trial count 5 was quashed at the invitation of prosecuting counsel who conceded that the count was not properly

joined and the co-defendant then pleaded guilty to counts 3 and 4. O'Reilly was not re-arraigned. He was tried and convicted on count 4.

Both men were sentenced.

O'Reilly appealed against conviction on the ground that the indictment to which he had pleaded was defective by reason of the inclusion of count 5 and that his pleas were a nullity.

Advise him as to his chances of success on appeal.

Question 3

Henry was indicted on three counts of wounding with intent, larceny of a motor car and receiving the said motor car knowing the same to have been stolen. On his arraignment Henry pleaded, not guilty of the offence of wounding with intent but guilty of the offence of unlawful wounding; not guilty of the offence of larceny but guilty of the offence of receiving the said motor car knowing the same to have been stolen. The trial judge rejected Henry's plea of guilty of the offence of unlawful wounding. The trial thereafter proceeded on the counts of wounding with intent and larceny of a motor car. The jury acquitted Henry on both counts. The trial judge nevertheless proceeded to sentence Henry in respect of the offences to which he had pleaded guilty. Henry contends

that the trial judge was wrong to sentence him as he did and seeks your advice.

Advise Henry.

Question 4

Johnson appeared before a magistrate on a charge, triable on indictment only. At the close of the preliminary enquiry the magistrate was satisfied that although the evidence adduced did not establish a prima facie case of the offence charged nevertheless it established beyond a reasonable doubt a lesser offence triable by the magistrate.

Counsel for the accused submitted that the magistrate ought at this stage to convict and sentence Johnson in respect of the lesser offence. Counsel for the prosecution contended otherwise, submitting that the magistrate had no alternative but to commit Johnson for trial on the lesser offence. The magistrate agreed with Counsel for the prosecution and committed Johnson for trial on the lesser offence.

Write an opinion as regards the merits of the contention of each party and indicate whether or not the magistrate arrived at the proper decision.

Question 5

Write notes on THREE of the following -

- (a) challenge for cause;
- (b) abandonment of appeal;
- (c) suspended sentence;
- (d) the preferring of an indictment in the High/Supreme Court;
- (e) judge's discretion to continue trial in the High/Supreme Court in the absence of the accused.

Question 6

Two police officers who were on surveillance duty, observed Albans and Jones "dipping" into the bags of people who were standing at a bus stop. Albans and Jones were arrested shortly afterwards and charged with attempting to steal.

At the trial, the judge observed to the jury that the scene of the crime was not far from the court and that "... some of you might think it appropriate to go and look at the area, if it is relevant in this case, when you leave the court ..."

The only issue in the trial was whether the police officers had been accurate in their observation and identification of the

defendants as the individuals whom they had seen attempting to steal at the bus stop. The officers were only a few feet away from the bus stop, and had been there for about 10 minutes in daylight.

Albans and Jones were convicted of attempted larceny and appealed on the ground that the judge was in error.

Write an opinion as to their chances of success on appeal.

Question 7

John Stokes was indicted before the Magistrate for wounding (count 1) and Malicious Damage to Property (count 2). He was convicted on count 1 and acquitted on count 2.

After sentence was passed on count 1 it was brought to the attention of the Magistrate that the virtual complainant in respect of both counts had neither taken the oath nor affirmed. Whereupon the Magistrate recalled the case and was about to hear the evidence afresh when counsel for Stokes entered the pleas of autrefois acquit and autrefois convict.

Advise the Magistrate.

Question 8

Bach was charged on an indictment for murder. The trial began in the St. Ann Circuit Court before a jury of twelve persons and Mr. Justice Quick.

On the first day, two witnesses for the prosecution gave evidence. On the morning of the following day, the No. 5 juror, Miss Hall, was absent.

The Court adjourned for a short while to await her arrival. When the Court resumed at 11:00 a.m. she was still absent. There was a discussion in open court as to whether or not the trial should proceed without her.

Counsel for the prosecution was of the view that the trial should proceed with eleven persons, so did Counsel for the defendant. The trial proceeded with eleven jurors. No note was made of any formal discharge or of the ground on which the trial was proceeding with eleven jurors only.

At around 2:30 p.m. at the close of the evidence of the third witness the following note was made on the record:

"Foreman of the jury makes an apology on behalf of No. 5 juror, Miss Hall, for not turning up in time. She claimed she lives far from the Court and could not get early transportation. Juror informs Court that she was in a long line waiting for transportation. Excuse accepted. Juror told she is excused for remaining part of case".

The trial went on. It lasted for three days. The eleven jurors unanimously found B guilty of murder. He was sentenced.

He has now appealed and wishes to know if the trial judge was right in continuing the case with eleven jurors only.

Advise him.
