

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1995

CRIMINAL PRACTICE AND PROCEDURE

(Wednesday, May 24, 1995)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

B, a businessman, lives with his family at 10 Bond Street Capital City. About 20 yards behind B's dwelling house is a warehouse which he had recently built.

On January 10, 1995, B and his family retired to bed around 10.00 p.m. Shortly after he had retired B heard footsteps outside. There was a bright light outside. He peeped through a window and saw three men. He recognized one of the men as CD whom he had known for the past 5 years. B shouted "thief!". X, B's neighbour who was awakened by B's shout, saw 3 men running from B's warehouse towards a jeep parked on the lane behind the warehouse. Each had something on his shoulder. They entered the jeep which sped away.

B went to the warehouse and observed that a window was broken. He missed 20 rolls of cloth and 3 boxes of soap.

On January 12, Constable Goodman went to the home of OP where he saw OP and CD. In a room were 18 rolls of cloth and 1 box of soap. OP told Constable Goodman that the things in the room were his and that he had bought them from CD. CD denied selling them to OP. The rolls of cloth and the box of soap were positively identified by B as his property.

CD and OP were arrested and charged.

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

QUESTION 2

Rod was charged on an indictment containing one count for conspiracy to defraud. The trial judge allowed the indictment to be amended at the end of the prosecution's opening by way of adding three further counts alleging conspiracy to steal.

At the trial two witnesses from abroad were called to give evidence.

On the second day of the trial Rod was absent. His counsel informed the court that he was ill and could not attend court.

Defence counsel therefore applied for an adjournment. Counsel for the prosecution opposed the application for adjournment on the ground that the witnesses would be leaving the country the following day and that it might not be possible to secure their attendance on any future date. The judge refused the application for adjournment and the trial proceeded. The witnesses gave evidence and were cross-examined by defence counsel. After the reception of the two witnesses' evidence, the trial was adjourned pending the availability of Rod. The trial resumed two weeks later with all the parties present.

Rod was ultimately convicted and sentenced. He now wishes to know whether or not the judge erred in granting the amendment and in refusing to grant the adjournment.

Advise him.

QUESTION 3

White was on January 7, 1995, convicted in the Supreme/High Court of robbery with aggravation and sentenced to five years imprisonment. He applied for leave to appeal against his conviction and sentence on January 8, 1995.

On February 28, 1995, not hearing from his attorney-at-law who defended him at the trial he filed a notice of abandonment of his appeal.

Two days after filing the notice he learned that on February 24, a single judge of the Court of Appeal had granted him leave to appeal and had assigned counsel on his behalf. He now seeks leave to withdraw his notice of abandonment.

- (a) Write an opinion as to the chances of his success in getting leave to withdraw the notice of abandonment.
- (b) Would your opinion be different if in fact he had abandoned his appeal on the advice of his attorney-at-law?
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QUESTION 4

On January 10, 1995, an information/charge was laid against P for careless driving arising out of a motor vehicle accident which occurred on August 17, 1994.

On February 1, 1995, a summons was issued against P. On February 8, 1995, in obedience to the summons he appeared in the Traffic Court, before a magistrate exercising special statutory summary jurisdiction.

He pleaded not guilty and the case was adjourned to the February 13, for trial.

On February 13, the prosecution was not ready and applied for an adjournment. P's counsel opposed the application. The judge after hearing submissions from both counsel refused the adjournment. However, the prosecution's witness was absent and so there was no evidence to put before the court on behalf of the prosecution. The information/charge was therefore dismissed.

On February 20, fresh proceedings were commenced by the prosecution.

P consults you.

Advise him.

QUESTION 5

A car driven by Speedy was stopped by the police at a road block. Moody and Smoky were passengers in the car. Constable Searchwell asked the three men to get out of the car. The Constable told them he was going to search the car and frisk them. He searched the car but nothing incriminating was found. He then

frisked the men. In the trousers pocket of each man he found a small parcel containing ganja. Constable Searchwell asked them where they were coming from. They refused to answer. He arrested and charged each of them for possession of ganja. In addition he charged Smoky and Moody with resisting arrest.

At the summary trial before a magistrate the prosecutor applied to the court for leave to have all the informations/charges tried at the same time. The application was not opposed by counsel for the defence. In fact counsel for the accused persons told the magistrate that it would be a waste of time to have separate trials. The magistrate granted the application. All three accused persons were tried together and convicted.

They now seek your advice as to whether or not the magistrate erred in allowing the informations/charges to be tried together.

Advise them.

QUESTION 6

Hazard was arraigned on an indictment containing two counts - Count 1 for wounding with intent and Count 2 for robbery.

He pleaded not guilty to both counts but in respect of Count 1 he pleaded guilty to unlawful wounding. The prosecution refused to accept this plea and Hazard was put in charge of the jury in respect of both counts.

The transcript of the court proceedings disclosed that the jury retired at 11.15 a.m. and returned at 12.00 noon. When asked if they had arrived at their verdict, the foreman replied that they were agreed on a verdict as to Count 1 but not so in respect of Count 2. The judge asked them if he could be of any further assistance to them. The foreman replied that they would like to be reminded of the directions given to them earlier as to the defence of claim of right. The judge obliged.

They retired for the second time. The transcript revealed that they returned at 12.45 p.m. and the following ensued:

Registrar: Mr. Foreman and members of the jury have you arrived at your verdicts?
 Foreman: Yes.
 Registrar: In respect of Count 1 is your verdict unanimous?
 Foreman: Yes.
 Registrar: How say you all is the accused guilty or not guilty?
 Foreman: Not guilty.
 Registrar: In respect of Count 2 is your verdict unanimous?
 Foreman: No.
 Registrar: How are you divided?
 Foreman: 5 - 2 (or the appropriate acceptable majority).
 Registrar: How say the majority of you, guilty or not guilty?
 Foreman: Guilty.

The trial judge then proceeded to sentence Hazard for unlawful wounding to which he had pleaded guilty and for robbery.

Hazard wishes to appeal.

Advise him as to whether or not on the facts outlined above he has any good grounds.

QUESTION 7

Answer any TWO of the following -

- (a) AB is brought before a magistrate in court, charged on an information with an indictable offence.
 Advise the Magistrate as to the procedure to be followed.

- (b) XY, being arraigned on an indictment for murder stands mute. His co-accused CD will not answer directly when pleaded.

The trial judge wishes to know what he should do.
Advise him.

- (c) OP is charged on an indictment for wounding with intent to do grievous bodily harm. He is not represented by counsel.

Advise him of his right of challenge in respect of the jurors.

QUESTION 8

On the trial of Black for robbery and other offences, Black gave evidence to the effect that his presence in the locality where he had been arrested after a chase was due to a visit to a public lavatory in that locality.

One of the jurors who knew the locality passed a note to the judge informing him that the lavatory was closed at the material time. The judge put a number of questions to Black on this matter and the prosecution then obtained leave from the judge to call rebutting evidence.

A witness was called, who gave evidence that at the material time the lavatory was in fact closed to the public. Black was convicted.

He wishes to know whether the judge had acted properly in receiving the note and in admitting the evidence in rebuttal.

Advise him.
