

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1996**

CRIMINAL PRACTICE AND PROCEDURE

Wednesday, May 29, 1996

Instructions to Students:

- (a) Time 3 ½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Arthur Dake was brought before the magistrate charged on information with stealing. He had 14 previous convictions. The magistrate decided to hold a preliminary enquiry with a view to committing Dake to stand his trial in the High/Supreme Court.

At the hearing, three witnesses, John Smart, Mary Doran and a police officer gave evidence.

The depositions disclose that John Smart was in a crowd at Smithville in the parish of St. Mary around 10.00 p.m. on January 10, 1996, when he was jostled. He felt inside his jacket pocket where he had his wallet and found that it was missing. He reported the matter to a police officer who was nearby. Mary Doran's evidence is that around 12.00 midnight on January 10, 1996, she was in Smithville when a young man wrenched her handbag away from her. About 15 minutes after, she believed she saw amongst the crowd the person who had taken her handbag. That person was Arthur Dake.

Dake was searched and found to have \$500 in cash on his person, together with a wallet containing a credit card personalised in the name of John Smart. The wallet found in Dake's possession was positively identified by Smart as the one which he had lost earlier that night.

Dake made a statement to the police in which he said that he had found the wallet on the ground about half an hour before he was arrested and had been waiting for a suitable opportunity to hand it to the police. He denied that he was the person who had taken Mary Doran's handbag..

Draft an indictment containing two counts in respect of offences committed against Mary Doran and John Smart for which Arthur Dake could be charged.

QUESTION 2

Mal Darby was charged with offences arising out of a theft and subsequent affray at a take-away restaurant. His defence was that one of the victims started the attack and he acted in self-defence. He also claimed that he was not involved in an assault on a second victim (who was stabbed).

A prosecution witness, Baron, had made a statement to the police implicating Darby in the stabbing. He was reluctant to come to court and was not listed on the back of the indictment. Darby's counsel asked the prosecution to supply the defence with a copy of Baron's statement. The request was not granted.

Another prosecution witness, Selvey, who had made a statement adverse to Darby, was called by the Crown/State but gave different evidence. An application by the Crown/State to treat Selvey as hostile was deferred by the judge who had Selvey questioned further in the absence of the jury before ruling that he was hostile to the Crown/State. His statement was accordingly admitted in evidence.

The jury convicted Darby of all the charges. Darby wishes to appeal and wants to know whether the prosecution's refusal to supply him with a copy of Baron's statement and the procedure followed by the judge in assessing Selvey's hostility constitute valid grounds of appeal.

Advise him.

QUESTION 3

Leebert was charged with rape (Count 1) and having sexual intercourse with a girl under the age of 16 years (Count 2). At the time of the trial the complainant was 15 ½. When she was called to give evidence the judge attempted by a series of questions to establish her capacity to understand the importance of telling the truth.

Concluding that she did not understand the significance of the oath, he decided that she could not give sworn evidence. She accordingly gave her evidence unsworn.

Another witness was called who corroborated the evidence of the complainant. Leebert was convicted.

Leebert is of the view that the procedure followed by the judge in dealing with the complainant was wrong and seeks your advice.

Advise him.

QUESTION 4

Answer any **TWO** of the following -

- (a) Edward Bruce is charged with rape. The prosecution wishes to avoid committal proceedings.
What other courses of action are open to the prosecution to bring about Edward's trial on indictment?
- (b) During the summary trial of Drake before the magistrate for dangerous driving, Drake intimated his desire to plead guilty to the lesser offence of careless driving. The magistrate is minded to accept the plea.
Advise the magistrate as to what course he should pursue.
- (c) B was committed to stand trial at the High/Supreme Court for robbery with aggravation. Before arraignment, counsel for B demurred and moved to have B discharged on the ground that the evidence as disclosed in the depositions was insufficient to justify a conviction.
Advise the judge.
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QUESTION 5

A and B were charged jointly with burglary and larceny of a television set, a video cassette, an amplifier and a toaster. At the trial which commenced on January 9, 1996, in the High/Supreme Court, both A and B pleaded guilty to larceny of the television set only. The prosecution refused to accept this plea and the trial continued with the whole count being read to the jury. The jury returned a verdict of not guilty in respect of both A and B. The judge then proceeded to sentence them on their earlier plea of guilty to larceny of the television.

On January 16, A's attorney-at-law signed and lodged a Notice of Appeal on A's behalf.

On January 18, B sought and obtained leave to appeal.

On January 23, A and B, on the advice of their attorney-at-law that they do not have any good ground of appeal, lodged Notices of Abandonment of their appeals. On January 26, their attorney-at-law realised that he had made an error and advised them to withdraw their Notices of Abandonment immediately. On the same day they wrote the Registrar seeking reinstatement of their appeals.

Write an opinion as to whether or not they are likely to have their appeals reinstated.

QUESTION 6

Following the death of Mary in a motor vehicle accident, John was charged indictably with the offence of manslaughter and summarily with the lesser offence of dangerous driving.

At the close of the preliminary enquiry into the charge of manslaughter, the magistrate found that no prima facie case had been made out and discharged John. At the hearing soon thereafter of the summary charge of dangerous driving, John pleaded guilty and was sentenced.

The Director of Public Prosecutions/Attorney General wishes to proceed indictably with the offence of manslaughter against John.

- (i) Write an opinion as to whether or not the plea of autre fois acquit would avail John.

 - (ii) Would your opinion be any different if Mary had died after John's guilty plea and sentence on the dangerous driving charge and the Director of Public Prosecutions/Attorney General then wished to charge John with the offence of manslaughter?
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QUESTION 7

Ali was indicted for larceny and receiving. The same goods were the subject of each of the counts which were laid in the alternative. The jury was directed that if they convicted Ali of larceny they need not consider the count of receiving since they were "alternative counts and indeed, alternative as between themselves". When the jury returned to the court they were asked by the clerk to reply "yes" or "no" to the question whether a unanimous verdict had been reached in regard to the two counts. On the reply of the foreman, "Guilty", the clerk asked: "On which count do you find him guilty?". The foreman replied: "On both counts". Questioned by the judge, the foreman said they found Ali guilty of both counts. The judge did not explain that that was contrary to his direction.

Ali was sentenced to two years imprisonment on the first count and admonished and discharged on the second.

Ali wishes to know whether or not there was an irregularity and if so, its likely consequence.

Advise him.

QUESTION 8

Buckettt was indicted for stealing certain goods. On the second day of his trial there was industrial unrest at the prison where he was in custody. When the court resumed, Buckettt was absent. The magistrate was told the reason for his absence. His counsel told the court that he had no objection to the trial being continued in the client's absence since it was proposed to take the evidence of the police officer whose evidence in no way implicated the accused. The trial proceeded with the police officer testifying.

Buckettt arrived just before the officer concluded his evidence in chief. Buckettt was eventually convicted. He now wants to know if there was any irregularity in his trial and what steps he should take to appeal his conviction.

Advise him.

[NB: In jurisdictions where the magistrate does not have power to try indictable offences, answer this question on the basis that trial took place in the High Court.]
