

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION, 1997**

CRIMINAL PRACTICE AND PROCEDURE

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COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

Tuesday, May 20, 1997

Instruction to Students:

- (a) Time: 3½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

On January 20, 1997, Mrs. Jewel Rama missed from her store three expensive rings. The police were called in.

On January 31, the police acting on information received obtained a search warrant and went to the home of Crees. Furtum, a friend of Crees, was seen with Crees in a room occupied by Crees. The warrant was read to Crees and thereafter the police proceeded to search the room. In a drawer the police found two gold rings.

Crees was questioned about the rings. In answer to a question put by Constable Quiz, Crees said he bought the rings from Furtum. When asked how much he paid for them he refused to answer. Constable Quiz asked Furtum if it was true that he sold the rings to Crees. Furtum declined to answer.

The rings were positively identified by Mrs. Rama as the rings which were stolen from her store.

Crees and Furtum were arrested and charged.

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

QUESTION 2

Jaycee appeared before a judge and jury on a one count indictment charging him with wounding with intent. After two witnesses had given evidence for the prosecution, his attorney-at-law spoke with him and then informed the judge that Jaycee wished to plead guilty to the lesser charge of unlawful wounding. The trial judge immediately informed Jaycee's attorney-at-law that he was accepting the plea and that, in all the circumstances, he was sentencing Jaycee to a term of imprisonment for two years with hard labour.

Jaycee is dissatisfied especially as his attorney-at-law had told him that a guilty plea would most definitely result in a fine being imposed by the learned judge. Having thus lost confidence in his attorney-at-law, he consults you and seeks your advice as to the best course to follow as the assizes are still in session and the sentence has not yet been officially recorded.

- (i) **Advise Jaycee.**

 - (ii) **In the event he has to appeal what steps must he take?**
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QUESTION 3

On February 21, 1997, Benedict was found guilty on three counts of a four-count indictment while the jury were unable to arrive at a verdict on count four.

By letter Benedict informs you as follows -

- (i) he was unrepresented;
- (ii) all the counts involved are capital offences;
- (iii) he is only now aware that one juror was discharged on the last day of the trial but before the jury had retired as that juror's wife had fallen seriously ill the night before. The trial judge had never mentioned any such action during the trial;
- (iv) on the second day of the trial, despite his strong objections, the trial judge had discharged a juror after the learned judge was told that the juror was related to Benedict's wife; while he had refused to discharge another juror who had known Benedict and who, on being questioned by the judge had said that, in his view, Benedict was a dishonest reprobate who was quite likely to commit such crimes as those on which he was indicted but that he would decide the matter only on the basis of the evidence that was led;
- (v) the jury returned their verdict two hours after they had retired and the foreman had indicated as follows -

" We the members of the jury find the defendant Benedict not guilty on count 4. However, we find him guilty on all other

counts. As to two counts, the verdict was unanimous but one member felt that he was not guilty on the other count;"

- (vi) he was sentenced to five years hard labour on each count, the sentence to run concurrently. However, he was so dazed by the verdict he had fallen seriously ill and so was only now able to write to you.

Benedict seeks your advice.

Advise Benedict.

QUESTION 4

On December 31, 1996, Prank was convicted on two informations which respectively charged him with attempt to export ganja and being in possession of ganja. Following upon his convictions his counsel on his behalf gave verbal notice of appeal. On January 3, 1997, he was transferred to the General Penitentiary . Two days later, on January 5, he signed a notice in which he stated that he did not intend to prosecute his appeal but that he thereby abandoned all proceedings in regard thereto as from that date. This notice was filed in the office of the Resident Magistrate's Court on January 7. On that same day the applicant signed a document in which he gave notice of his desire to appeal against his convictions and sentences. On January 8, he signed a letter addressed to the clerk of the court in which, after referring to the verbal notice of appeal given on his behalf, he stated that he "have abandoned same on 5th instant and I have found it necessary to re-open the said appeal."

With this letter Prank submitted his grounds of appeal.

Prank wants to know if his appeal is properly before the Court.

Advise him.

QUESTION 5

Serrano was visiting Dolly when Ishelli, Serrano's wife, suddenly appeared. Ishelli, cursing very loudly, jumped over the fence, pushed open the door which was unlocked and proceeded to beat Dolly. Dolly was able to overcome Ishelli and in the process tore up Ishelli's clothes and dislodged a number of Ishelli's teeth. The fighting went on for a while until a neighbour rescued Ishelli and called the police.

When the police arrived some 30 minutes later, they immediately arrested both Ishelli and Dolly and took them to the police station. Serrano, who had fled the scene, soon after came to the police station and pleaded with the police not to lay any charge against the two women.

Soon after, Constable Poori, who was not in anyway detailed to deal with the matter, told the women that due to the intervention of Serrano no charge would be laid against them and though not authorized to do so, let Ishelli and Dolly leave.

Two days later, however, officers Hardware and Terry went to Dolly's home, seized her, pushed her into the police van and took her to the station. There was, however, quite a struggle with Dolly biting and scratching the officers.

Officer Hardware filed two complaints against Dolly. The first complaint charged her with assaulting and beating Ishelli and using loud and abusive language to the annoyance of members of the public while the second complaint charged her with resisting arrest and assaulting a police officer in the execution of his duty.

Serrano retains you to appear on behalf of Dolly to which Dolly agrees. The matter is listed for today.

Indicate how you would proceed and the submissions you would put forward on Dolly's behalf.

QUESTION 6

Sita and Jagroop, who admitted to being lovers, were on trial before a judge and jury on a five count indictment. At the start of the trial, attorneys-at-law for the defendants applied to have separate trials for each of the defendants as well as severance of the various counts but their applications were turned down by the trial judge.

The five counts charged the defendants as follows -

- Count 1: Sita and Jagroop were jointly charged with murdering Dhangroo, Sita's husband, on January 25, 1996.
- Count 2: Sita and Jagroop were jointly charged with attempted arson of Sita's and Dhangroo's dwelling house on January 25, 1996.
- Count 3: Sita only was charged with assault occasioning a wound on Dhanwantie's, Jagroop's girlfriend, on September 19, 1995.
- Count 4: Sita only was charged with attempted murder of Dhangroo by unlawfully administering a poisonous substance to Dhangroo on July 18, 1995.
- Count 5: Jagroop only was charged with conspiracy with other persons unknown to steal Dhangroo's motor vehicle on June 30, 1994.

After their applications were turned down, Jagroop began hurling insults at the learned judge and the attorney-at-law for the prosecution. Despite a number of adjournments on the first morning of the trial, there was no letting up of Jagroop's tirade whereupon the judge decided to proceed with the trial in the absence of both Jagroop and Sita.

They were duly found guilty on all counts of the indictment and the *allocutus* was duly put to them when Sita informed the court that she thought that she was pregnant.

The learned trial judge said that he could take no cognisance of her "thought of being pregnant" without any supporting evidence and immediately sentenced both Sita and Jagroop to death by hanging and to three months imprisonment on all the other charges, the sentences to run concurrently.

Sita and Jagroop wish to appeal against their convictions and sentences. You have been requested to draft an opinion as to the grounds of appeal.

Draft the opinion ignoring all reference to the sentences on the non-capital offences.

QUESTION 7

Dalton appeared before Mr. Justice Bend on a one count indictment. Before he was asked to plead, the attorney-at-law for the prosecution told the judge that he wished to offer no evidence against Dalton but that he did not wish to have the charge formally dismissed then because of the presence of the policemen and the matter was adjourned to a date to be fixed.

Three months later, the matter came up before Mr. Justice Straight with a new prosecuting attorney-at-law. The learned judge did not know of the earlier events but the prosecuting attorney-at-law told him of them stating, however, that the previous attorney-at-law had no authority so to do.

Dalton was not present at the beginning of the hearing before Mr. Justice Straight as he had not been served with any notice but the learned judge issued a warrant for his arrest. However, fifteen minutes later, Dalton appeared. The matter was again called and Dalton requested an adjournment in order to retain an attorney-at-law. His request was denied and he was called upon to plead and pleaded not guilty.

A jury was empanelled and the trial proceeded with Dalton appearing in his own defence. Dalton was found guilty and sentenced to six months imprisonment.

Dalton is dissatisfied with his conviction and sentence and consults you as he is particularly concerned about the effects of his incarceration on his wife who is hospitalised and his two infant children, one of whom requires constant medical attention. In any event, his appeal, if he decides so to do, will most likely not come up for hearing before ten months.

Advise Dalton.

QUESTION 8

On January 7, 1997, John Mathias and Balbir Kelso were arraigned on one indictment charging them jointly in count 1 with wounding Sal Amigo with intent to do him grievous bodily harm on November 12, 1996, and in count 2 with unlawful wounding of Sal Amigo on that date.

They pleaded not guilty to both counts. On January 8, 1997, Mr. Justice Swan granted an application by the prosecution to add four counts to the indictment so that each defendant was also charged individually with each offence charged in counts 1 and 2. An application by the defendants for separate trials was refused, and they pleaded not guilty to the added counts.

On January 10, 1997, the jury convicted each defendant on the counts charging each individually with unlawful wounding and acquitted them on all other counts. They were sentenced. Each defendant appealed against conviction on the grounds that -

- (i) the trial judge was wrong in law in permitting the prosecution to add by way of amendment to the indictment four further substantive counts after arraignment; and
- (ii) that having permitted the prosecution to add further counts to the indictment, the trial judge was wrong in failing to sever counts 1 and 2 from the indictment as amended and in not ordering individual trials of both defendants on the added alternative wounding counts.

Mathias and Kelso want to know if there are any merits in these grounds.

Advise them.
