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

**LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 1998**

CRIMINAL PRACTICE AND PROCEDURE

(Friday, May 29, 1998)

Instructions to Students

- (a) Time 3½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate 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

Ms. Raleigh lives alone in a two-apartment house. On January 10, 1998, after securing all the windows and doors, she retired to bed around 10.00 p.m.

In the early morning of January 11, around 4.00 a.m., she got up and went to the bathroom. She was alarmed when she noticed that three panes of louvre blades were removed from the window in the bathroom. An expensive ring which she had left on her dresser before retiring to bed was missing. Trinkets she had in a drawer were taken, as well as two thousand dollars cash. The matter was reported to the police.

On January 15, whilst at the hairdresser, Ms. Raleigh saw what appeared to be her ring on the finger of a young woman who was in the waiting room. Ms. Raleigh quietly slipped out of the room and used her cellular telephone to contact the police. The young lady was accosted by the police. She gave her name as Fancy Searchwell. The ring was removed from her finger and was positively identified by Ms. Raleigh as her ring which was stolen from her house.

When questioned by the police, Ms. Searchwell said she got the ring as a birthday present from her friend, John Coolman. She took the police to Coolman's house. Coolman denied giving Ms. Searchwell the ring. He told the police he was unemployed. In a room occupied by Coolman, the police found trinkets which were positively identified by Ms. Raleigh as hers. Coolman refused to tell the police how he came by the trinkets and declined to say where he was on the night of January 10. Both Ms. Searchwell and Mr. Coolman were arrested and charged.

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

QUESTION 2

Reno is charged summarily with assault occasioning actual bodily harm. On April 8 when Reno first appears at the Magistrate's Court, he pleads not guilty and the matter is part-heard. It is then adjourned for two weeks. On the adjourned day, April 22, Reno does not appear and the Magistrate decides to proceed "ex parte". This he does and Reno is found guilty in his absence. The matter is then adjourned for sentencing to April 24 to permit the police to make enquiries as to previous convictions.

On April 24, Reno appears and informs the Magistrate that he did not attend court on April 22 because he was involved in a motor vehicular accident on his way to court and was hospitalised. The magistrate, on hearing his explanation, declares a mistrial and transfers the case to another magistrate in the same district for a fresh trial.

When the case comes up before the other magistrate the next week, Reno is represented by counsel. The latter takes a preliminary point contending that Reno should not be called upon to stand trial because he was previously convicted by another court for the same offence.

The new magistrate wishes to be advised as to how he should proceed in the matter.

Advise him.

QUESTION 3

The jury is empanelled trying a case of robbery in which Len is the accused. During his cross-examination of one witness, defence counsel repeats a question for the third time despite the warning of the trial judge. The marshal of the court, who is sitting in the spectator's gallery some distance away from the jurors, mutters "wasting time on nonsense".

The matter is shortly afterwards adjourned for the lunch break and defence counsel, after the jury is led out of court, reports the incident to the judge who had heard nothing. The judge declines to discharge the jury as required or to do anything about the incident.

Later, defence counsel requests the jury to remain in court during a voir dire in respect of a statement given by the accused. The jury remains in court and at the end of the voir dire the statement is admitted into evidence.

After the summing up, the jury retires shortly after 4.00 p.m. Juror John realises that the statement has not been given to the jury so he leaves the jury room to obtain it from the marshal. The marshal is not at the door so John wanders along the corridor of the courts until he sees a public phone when, on an impulse, he telephones his girlfriend and speaks for a few minutes. On leaving the booth he sees the marshal near the public washroom and relates his errand. He returns to the jury room with the statement ten minutes after he left. An hour after, the jury returns with a guilty verdict.

Advise the defence whether there have been any material irregularities in the trial.

QUESTION 4

Jim is charged for a traffic offence. The complaint/information alleges that on Friday, March 6, 1988, at City Airport, Kenton, Jim

“unlawfully parked motor vehicle CAR 1900 elsewhere than in a place provided for that purpose and otherwise than in a manner required by an authorised officer contrary to Section 40 of the Road Traffic Act”.

Section 40 of the Act provides that it is an offence to

“park a vehicle elsewhere than in a place provided for that purpose or otherwise than in a manner required by an authorised officer”.

Jim tells you that on March 6 he went to City Airport to meet his sister and left his vehicle for a minute at the loading zone where there was a No Parking sign. He returned with a suitcase to see a police officer who requested that he drive on immediately. Jim nevertheless went back to collect his sister and her other suitcase and then left the loading zone. He was subsequently charged for the offence.

- (i) Advise Jim whether the complaint/information is duplicitous.
 - (ii) Assuming that the complaint/information did not contain the relevant sections but merely stated that the offence was “contrary to the Road Traffic Act”, is the complaint/information valid?
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QUESTION 5

On March 3, the magistrate discharged Jomo at the conclusion of a preliminary enquiry into a charge of wounding with intent. She found that there was insufficient evidence against the accused because, in her opinion, the prosecution had failed to rebut self defence. The Director of Public Prosecutions (DPP) is dissatisfied with this decision since he feels that the magistrate has strayed outside of her function as a committing magistrate. He is also of the opinion that there is sufficient evidence to commit the accused.

- (i) What is the role of a magistrate in determining a no-case submission in committal proceedings?
 - (ii) What should the DPP do to ensure that Jomo stands trial at the Supreme/High Court?
 - (iii) Assuming that the magistrate had committed Jomo to stand trial on the lesser charge of unlawful wounding but the DPP feels that there is sufficient evidence of wounding with intent, how should he proceed to ensure Jomo stands trial for this offence?
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QUESTION 6

Noel is charged with murder. The case for the prosecution depends largely on the evidence of Mrs. Kay, the wife of the deceased, and her son, Rube. At the trial, prosecuting counsel supplied to the defence counsel the descriptions of the accused given by the two witnesses but did not hand over their original statements given to the police. During cross-examination, defence

counsel elicits from Mrs. Kay the admission that she had never told the police that the accused had a very large nose or a scar in giving her original statement. Rube also admits to defence counsel that he had not mentioned the scar in his statement to the police. Both witnesses are cross-examined about other details of the incident - the room where the incident took place, what the accused said, the number of persons present.

Prosecuting counsel is aware that there are some inconsistencies between the evidence of the two witnesses at trial and their original statements but he does not disclose the statements.

The accused is eventually convicted. Two days later, two jurors visit the Registrar of the Supreme/High Court and give sworn affidavits to the effect that the decision of the jury was not unanimous.

You are now retained as counsel for the appellant and asked to prepare an advice as to the likelihood of success of any possible grounds of appeal.

Advise.

QUESTION 7

Miliken was charged with being in possession of housebreaking implements by night. In his opening speech, counsel for the Crown/State told the court that the accused was found at 1.00 a.m. on the night of April 1 with a picklock, a jack and a bit. At the close of the Crown's/State's case, counsel for the accused submits that there was no case for his client to answer in that there was no evidence from the witnesses as to the time when his client was "found"

with the housebreaking implements. Crown/State counsel conceded that he inadvertently omitted to elicit such evidence. He applied to the court for leave to re-open the prosecution's case. Counsel for the defence strongly opposed the application. The trial judge granted the application. The police officer was recalled and he testified that the accused was found with the implements at 1.00 a.m. on April 1, 1998.

In his defence, the accused denied that the incident described by the prosecution witnesses ever happened. His defence consisted of an attack on the credibility and honesty of the police witnesses and of accusations of conspiracy by those and other police officers. After the evidence for the defence, the prosecution successfully applied for leave to call evidence in rebuttal of the conspiracy allegation.

Miliken was convicted and sentenced. He now wishes to appeal.

Write an opinion as to whether or not the trial judge erred in -

- (i) permitting the prosecution to re-open the case after the no-case submission;
 - (ii) permitting the prosecution to call evidence in rebuttal.
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QUESTION 8

Kerry and Patel have been tried for murder. On April 7 the jury finds Kerry guilty of murder and Patel of manslaughter. Patel is sentenced to twenty-five years imprisonment and Kerry to death.

On the next day, both men file notices of applications for leave to appeal, but Kerry inadvertently neglects to sign his notice.

On April 10 counsel advises Patel against pursuing the appeal because of the current attitude of the Court of Appeal in respect of what it deems "worthless appeals".

As a result, three days later Patel withdraws his appeal. Patel has now been advised by Senior Counsel that he has good grounds of appeal. Patel has also noticed that since his conviction several accused who were convicted of manslaughter have been either placed on bond or sentenced to no more than five years imprisonment.

Meanwhile Kerry has been advised by the Registrar of the Supreme/High Court that his notice was unsigned and is therefore invalid.

- (i) Advise Patel as to the necessary procedure which must be invoked to bring his appeal before the Court of Appeal and the likelihood of it being heard.
 - (ii) Advise Kerry as to the likelihood of his appeal being heard.
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