

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

**LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 1999**

**CRIMINAL PRACTICE AND PROCEDURE**

**(Wednesday, May 26, 1999)**

**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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**QUESTION 1**

On April 6, 1999, at about 11.30 p.m., Healey returned home from carnival. He was exhausted. He went to bed and fell asleep immediately. He had earlier that day secured the doors and windows to his house. In the early hours of the morning of April 7, Healey was awakened by an intruder who was armed with a knife. Healey shouted "Murder! Murder!". His neighbour, Mr. Bravo, rushed to his assistance. The intruder stabbed at Mr. Bravo with the knife. His aim was bad and instead of Mr. Bravo, Healey was seriously injured. The intruder escaped.

At daybreak the police were called. A few days later a man was detained by the police as a suspect. The man was subsequently identified by Healey and Mr. Bravo as the intruder who was seen in Healey's house.

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

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**QUESTION 2**

Polo was indicted in the Supreme Court/High Court for murder. The transcript shows that the jury retired at 2.00 p.m. and returned at 4.30 p.m. The transcript discloses the following -

"Registrar: Mr. Foreman, please stand. Members of the jury, have you arrived at your verdict?"

Foreman: No.

His Lordship: The accused is remanded in custody for retrial at the next sitting of the Circuit Court/Assizes.

Foreman: My Lord, we would like some more time.

His Lordship: You, Mr. Foreman, think that with some more time you could arrive at a verdict?

Foreman: Yes, my Lord.

His Lordship: How much more time do you need?

Foreman: Two hours.

His Lordship: If you could not arrive at a verdict after two and one-half hours, another two hours would hardly do you any good. If you think that another half hour will suffice, I will be prepared to allow you half an hour."

The jury retired for another half an hour and returned with a unanimous verdict of guilty as charged. Polo was sentenced to life imprisonment.

When the accused was being removed from the dock, one of the jurors stood and told the judge that she had not agreed with the verdict and that the foreman had misled the court when he said that the verdict was unanimous.

Polo wishes to appeal and wants to know if he has any good ground of appeal.

Advise him.

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### QUESTION 3

Dan was charged on an indictment containing two counts. The first count charged him with forgery of a cheque and the second count with obtaining money by false pretences. At the close of the Crown's case and after a

submission of "no case" to answer was made in respect of count two, counsel for the Crown applied to have the particulars of that count amended to read "obtaining a valuable security to wit a cheque...".

Counsel for the defence opposed the application. The judge granted the application.

Prosecuting counsel was then informed that two members of the public sitting in the gallery had realised that they could give relevant evidence. He was allowed to call them.

Dan gave evidence to the effect that the writing on the cheque was not his. Before the defence had closed its case, the judge allowed the prosecution to call a hand-writing expert to compare the writing on the cheque with a sample of Dan's writing.

Dan was convicted and sentenced. He now wishes to appeal and wants to know whether or not the judge erred in granting the amendment and in allowing the prosecution to call the two witnesses and the expert witness.

Advise him.

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#### **QUESTION 4**

On January 10, 1999, Bert and Jakes were indicted for murder. The jury convicted Bert of manslaughter and Jakes of murder. Bert was sentenced to imprisonment for life and Jakes to death.

On January 13, 1999, Bert filed a notice of appeal against conviction and sentence. On January 16, counsel advised Bert against pursuing the appeal.

On January 18, Bert filed with the Registrar a notice of abandonment of his appeal. However, on the following day (the 19th), Bert was advised by senior counsel that he had a good ground of appeal. Bert immediately sent another notice of appeal to the Registrar in which he stated that he found it necessary to reopen the appeal and was therefore withdrawing the notice of abandonment. With this letter, Bert submitted his grounds of appeal.

On January 28, 1999, Jakes, who after the verdict had been suffering from acute depression, filed a notice of intention to apply for an extension of time within which to appeal his conviction.

They both seek your advice as to the likelihood of their appeals being heard.

Advise them.

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### QUESTION 5

Bob was convicted for assault. The incident was said to have taken place outside a bar. A prosecution witness, Nolan, claimed to have seen the incident from a seat inside the bar and identified the defendant as the assailant. The attorney-at-law representing the defendant applied for the bench to visit the *locus in quo*. At the *locus*, the three justices, their clerk, the prosecutor and the defendant's attorney went into the bar. The defendant was left outside.

The defendant was convicted, fined and paid the fine on the same day.

It is now seven days since his conviction. He now wishes to appeal and wants to know if, on the facts outlined, he has any good ground of appeal and what he must now do to perfect an appeal.

Advise him.

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### QUESTION 6

On the arraignment of Solo for murder, counsel for the defence applied for an adjournment for a week to enable him to investigate some of the jurors named on the panel and whom he had wished to challenge for cause. He informed the judge that he had been advised that some of the jurors were at a party put on by a relative of the deceased and that some of them lacked the requisite qualification. He further told the judge that he was only retained the week before the trial date and did not have sufficient time to investigate the jurors.

The judge refused the application for adjournment. Thereafter, counsel for the defence sought leave of the court to examine on the *voir dire* each juror before he was sworn. This application was also refused.

What kinds of challenges should counsel for the defence make and state whether or not the judge was right in refusing the applications.

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**QUESTION 7**

John and Fred were charged with conspiracy to steal and with larceny. At the trial, two witnesses from abroad were called to give evidence. On the second day of the trial, John was absent. His counsel informed the court that John was ill and could not attend court. He therefore applied for an adjournment.

Counsel for the prosecution opposed the application on the ground that the witnesses would be leaving the island 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 continued in the absence of John, but with his counsel present.

On the third day John was present, but Fred who was in custody, was not before the court. No reason was given for his absence. The judge ruled that the trial should continue in Fred's absence. Fred's counsel did not oppose this course.

John and Fred were convicted and sentenced.

Write an opinion as to whether or not there was any procedural irregularity in their trial.

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**QUESTION 8**

Mitchell was indicted in the Supreme Court/High Court for larceny of a motor car. The trial judge refused the application by counsel for the defence to

see the statements of certain witnesses who had given the police a description of the driver of the stolen car.

One of the planks of the prosecution's case was a written confession made by the accused. The judge heard evidence on the *voir dire* from the police officers and the accused. The judge then gave his ruling. He found that the statement was voluntarily made and therefore admissible.

Throughout the proceedings on the *voir dire*, the jury was absent. When the jury returned, the judge addressed them as follows -

"...When you were sent away I had to determine the admissibility of certain evidence. I have completed that exercise and the Crown is going to be permitted to lead that evidence. The same questions which were sought to be raised before me as a judge of the law would now be canvassed before you as judge of the facts. And I will, at the appropriate stage, have to direct you that any decisions that I would have made in terms of voluntariness are a different question from your own final determination of questions of fact as a matter of truth."

Mitchell was convicted. He wants to know if he has any good grounds of appeal.

Advise him.

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