

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2000

CRIMINAL PRACTICE AND PROCEDURE

(Monday, May 15, 2000)

Instructions to Students:

- (a) Time: 3½ 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

On January 20, 2000, Simple Simon was found with goods stolen from a jeweller's shop on January 18, 2000. The police also found in the possession of Simon, goods stolen on January 10, 2000, from a pharmacy adjoining the jeweller's store.

A man similar in appearance to Simon was seen running away from the pharmacy on January 10. The goods stolen from the jeweller's shop and pharmacy and found in the possession of Simon consist of six bracelets and two cameras respectively.

The jeweller's shop is owned by Mr. John Masters and the pharmacy by Mrs. Noreen Newton. Both places are situated in the parish of St. Andrew.

Draft an indictment for Simon's trial in the Supreme/High Court.

Question 2

H was charged with driving while disqualified. The only issue at the trial was whether a police officer had correctly identified H as the driver on that particular day. The magistrate acquitted H. H was subsequently charged with perjury for swearing that he had not driven during the year in question. The officer was allowed to give the same evidence. He was supported by other witnesses, who were not available at the first trial. The witnesses testified that they saw H driving on other occasions during that year.

At the conclusion of the Crown's case, defence counsel made a no-case submission. The magistrate pronounced that he found the case proved. Counsel for the defence submitted that the magistrate having found as he did should not continue to hear the matter. The magistrate over-ruled counsel's submission and called upon the accused to answer the charge. H gave evidence on his own behalf and called witnesses in support.

The magistrate convicted H and he was accordingly sentenced. H has appealed.

Write an opinion as to his chances of success on appeal.

Question 3

On a charge of wounding with intent, Lucas pleaded guilty to unlawful wounding. The Crown did not accept the plea and the trial proceeded with the charge being read to the jury.

The prosecution did not call evidence of Lucas' original plea of guilty to the lesser offence. Lucas' defence was an alibi. The judge in his summing-up told the jury that Lucas had pleaded guilty to the lesser offence and directed them to find him guilty of the lesser offence if they were of the view that he was not guilty of the greater.

The jury found Lucas not guilty of wounding with intent and also not guilty of unlawful wounding. The judge refused to accept the verdict. He told the jury that the accused person's defence of alibi was not consistent with his original plea of guilty to the lesser offence. They were sent back to reconsider their

verdict. After further deliberation the jury found Lucas not guilty of wounding with intent but guilty of unlawful wounding. Lucas was sentenced to a term of imprisonment.

Lucas wishes to appeal and seeks your advice as to his chances of success.

Advise him.

Question 4

On February 9, 2000, P was convicted of motor manslaughter in the Supreme/High Court. In March the Court of Appeal dismissed his appeal against conviction.

P now wishes to apply for an extension of time in which to seek leave to appeal against sentence and to request the Court to hear fresh evidence in relation to his conviction.

P wants to know whether or not the Court of Appeal has the jurisdiction to entertain his two applications.

Advise him.

Question 5

Max was charged with robbery which was alleged to have been committed in the dwelling house of one Mr. Fairbanks. On arraignment, Max was willing to plead guilty to burglary, but denied that he had intended any violence to the victim.

The prosecution declined to apply to amend the indictment to include a count for burglary. (A verdict of guilty of burglary is not in law, open to the jury on the robbery count.)

About an hour after the jury had retired they returned and asked the judge if there was a lesser charge that they could bring against Max other than robbery.

The judge refused to deal with that possibility; he directed them that the way the prosecution had presented the case the essential issue was whether or not violence had been used. (The jury may of course, on a charge of robbery return a verdict of guilty to the lesser charge of larceny.) After retiring for a further half- hour, the jury found Max guilty of robbery.

Max was sentenced to a term of imprisonment. When Max was being removed from the dock one of the jurors rose and told the court that he had not agreed with the verdict. The trial judge declined to act on the statement of the juror.

Max has appealed and wants to know whether or not he has any good ground of appeal.

Advise him.

Question 6

Answer both (a) and (b)

- (a) German was charged summarily before a magistrate. He pleaded not guilty. After the first witness for the prosecution was cross-examined, counsel for the defendant submitted that the information disclosed no offence known to law. He accordingly asked the magistrate to dismiss the charge against his client. Prosecuting counsel conceded that the information was defective but asked the magistrate for leave to amend the information. This application was vigorously opposed by defence counsel.

Advise the magistrate.

- (b) At the start of the summary trial of James, the main prosecution witness was absent. After the prosecution case had been closed and while the defendant was giving evidence, the witness arrived. It is not disputed that the witness has a good reason for being late. The prosecution applies for leave to re-open its case.

Advise the magistrate.

Question 7

Wood was charged on an indictment containing five counts (two for larceny and three for obtaining goods by false pretences).

After deliberating for 50 minutes the jury returned and announced that they had arrived at unanimous verdicts in respect of the counts for larceny but were divided in respect of the counts for obtaining goods by false pretences. The unanimous verdicts were taken. The judge asked them to go back and consider the remaining counts. After retiring for a further 15 minutes they returned. The foreman told the Court that one of their members was having a severe headache, whereupon the judge discharged that juror and asked the rest to return to the jury room. After a short while the jury returned with unanimous verdicts of guilty in respect of the false pretence charges. Wood was sentenced.

Ten days have elapsed since his conviction. He wishes to appeal and wants to know -

- (i) whether or not the judge erred in the exercise of his discretion to discharge the juror;
- (ii) the necessary steps he should take to pursue an appeal.

Advise him.

Question 8

Answer any TWO of the following:

- (a) Cairus had been acquitted of murder. He then confessed to a newspaper reporter that he had committed the crime. He was subsequently charged for perjury. Part of the evidence will in effect be that he had committed the murder of which he had been acquitted. Cairus wants to know if any plea in bar of trial for perjury will avail him.

Advise him.

- (b) On Kray's arraignment for murder the clerk addressed him thus -

"Prisoner at the bar, the names that you are about to hear called are the name of the jurors who are to try you. If therefore you wish to object to them or to any of them, you must do so as they come to the book to be sworn and before they are sworn, and your objection shall be heard."

Kray asks for your advice as to the kinds of challenges that are available.

Advise him.

- (c) Rhone was charged with causing grievous bodily harm with intent . The prosecution warned the defence that they were not minded to call a certain witness named on the back of the indictment. The judge refused defence counsel's request to order the prosecution to call the witness or for himself, to call the witness.

Rhone was convicted and sentenced. Rhone wants to know whether or not the judge erred in refusing his application.

Advise him.
