

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2002

CRIMINAL PRACTICE AND PROCEDURE
(MONDAY, MAY 13, 2002)

Instructions to Students

- (a) Time: 3 ½ 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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

On January 10, 2002, Mr. Jewell missed from his store three expensive gold rings. The police were called in. On January 24, the police acting on information received, obtained a search warrant and went to the home of Furtum. The warrant was read to him and thereafter the police proceeded to search the room occupied by Furtum and his companion Miss Princess.

They were questioned about the rings. Miss Princess told the police that one of the rings was given to her by Furtum. In answer to a question put by Constable Quiz, Furtum said he bought the rings whilst on King Street from a man whom he did not know. When asked how much he paid for them he refused to answer. The rings were positively identified by Mr. Jewell as the rings he had missed from his store. Furtum and Princess were arrested and charged.

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

QUESTION 2

Answer TWO of the following.

- (i) Humpty was indicted in the High/Supreme Court for possession of house-breaking implements. On January 7, 2002, Humpty pleaded not guilty to the charge. After the prosecution had opened the case to the jury but before they could call evidence, the judge directed the jury to acquit the defendant, who was unrepresented. The jury duly did so.

The Director of Public Prosecutions wants to know "whether, in a prosecution which had otherwise been properly brought and where there is evidence which is fit to go before a jury, a trial judge has power to prevent the prosecution from calling evidence and direct the jury to acquit on the basis that he thinks a conviction unlikely?"

Advise him.

(ii) A statute provides:

"Every person who shall in any thoroughfare or public place indecently expose his person or her person shall be guilty of an offence and shall on summary conviction be liable to a penalty not exceeding one hundred dollars."

Three days ago, Brown was convicted of a breach of the above statute and now wishes to appeal.

Advise him on the steps he must take to perfect his appeal.

(iii) Dumpty is indicted for rape. He has exhausted his peremptory challenges. He was told by the trial judge that it was open to him to challenge any of the persons called to the jury box for cause.

He wants to know on what bases he may challenge jurors for cause.

Advise him.

QUESTION 3

In March 2001, Morris was prosecuted for failure to comply with an enforcement notice issued under the Town and Country Planning Act in respect of Morris' car wash business. The breach of notice allegedly occurred in October 2000. The summary trial of the information alleging the breach was set for May 2001. Morris had meanwhile applied in December 2000, for a certificate of lawful development. In May 2001, the certificate of development was granted. In consequence, with the consent of the magistrate, the charge against Morris was withdrawn. However, in view of subsequent activities at the site and the alleged misrepresentation and non-disclosure made by Morris in his application, the certificate of lawful development was revoked in October 2001.

In November 2001, a fresh information was laid against Morris alleging the same failure to comply with the enforcement notice; the information was in identical terms to the earlier one. The information is now before the magistrates' court for trial.

Morris seeks your advice as to what plea(s) he may raise at this stage.

Advise him.

QUESTION 4

Mutt was indicted for murder. The jury had retired to consider their verdict. The usher went to the jury room to remove the luncheon remains. At that time one of the jurors received a telephone call on his mobile telephone. He did not answer it. The usher removed the battery and reported the matter to the judge. The

judge called counsel to his chambers and informed them of the incident. Both counsel agreed that there was no need for an investigation. Mutt was convicted and sentenced.

A few days after the verdict, the juror gave a statement in which he admitted making a telephone call to his place of business while in the jury room, and that some members of the jury had made disparaging remarks throughout the trial about Mutt's appearance, his mannerisms and business integrity. Also, the juror said in the written statement that some members of the jury appeared to have reached a decision at the outset of the trial and that newspapers dealing with the trial were brought into the jury room by jurors and shown around.

Mutt has appealed his conviction.

Write an opinion as to whether or not Mutt has any good grounds of appeal.

QUESTION 5

Eton and Tom were charged on an indictment containing one count for wounding with intent. Both pleaded not guilty to wounding with intent but guilty to the lesser offence of unlawful wounding. The prosecution did not accept Tom's plea of guilty to the lesser offence. The trial judge approved the acceptance of Eton's plea and the plea was entered. However, upon hearing the background to the charge during the opening, the judge changed his mind and directed that the joint trial of Eton and Tom should proceed. Eton was convicted of wounding with intent.

Tom was acquitted of wounding with intent. The lesser offence of unlawful wounding was not left to the jury. The judge on the basis of Tom's earlier plea of guilty to unlawful wounding, ordered that another count be added to the indictment. This was done. The judge thereafter imposed a fine of \$10,000 against Tom and sentenced Eton to three years imprisonment at hard labour.

Both Eton and Tom wish to appeal and seek your advice as to whether or not they have any good grounds of appeal.

Advise them.

QUESTION 6

Answer TWO of the following.

- (i) At the start of the preliminary enquiry into a charge of murder against Kevon, the charge is read out to him. Kevon is alleged to have stabbed his girlfriend in a fit of jealous rage and even though he is told that he is not required to plead, Kevon blurts out, "Ah guilty, don't bother with a trial, ah ready to dead."

The magistrate is in a quandary as to how to proceed.

Advise the magistrate.

- (ii) On February 11, 2002, Pablo was convicted of motor manslaughter in the Supreme/High Court. In March the Court of Appeal dismissed his appeal against conviction.

Pablo 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.

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

- (iii) At the start of the summary trial of James, the main prosecution witness was absent. After the prosecution closed its case 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

Lawry was indicted before a judge and jury for shop-breaking and larceny. After retiring for sometime the jury sent a message to the judge saying that they would like to see the car from which the accused was taken. The car had not been identified otherwise than as being a Vauxhall Viva two-door car.

An argument took place before the learned judge, in the absence of the jury, during which counsel for the accused said that he thought it would probably be to his client's advantage if the jury could see the car.

The judge took the view that if the jury were to have a look at the car it would be like a mere inspection of the locus in quo.

As a result, a Vauxhall Viva two-door car was brought into the court yard and the jury, counsel, the accused and the judge went out and had a look at it. The car which was inspected was not identified by the police constable as being the defendant's car.

Lawry was convicted and sentenced. He wants to know if the learned trial judge erred in allowing the inspection of the car.

Advise him.

QUESTION 8

A, B, C and D were driving their motor cycles abreast along a public road and by driving in that formation had been an annoyance to other road users. They entered a 50 k.p.h. speed limit zone, together each cyclist travelling at 80 k.p.h. D collided with a pedestrian who was knocked to the ground.

Four separate informations were laid charging each of them with driving at a speed exceeding the speed limit. A fifth information was preferred against D for dangerous driving. A sixth information was preferred against A for driving without a licence.

All these offences are triable summarily before a magistrate.

At their trial in the magistrates' court the prosecution seeks leave to try all six informations together. Counsel for the defence objects contending that the magistrate has no jurisdiction so to do.

How should the magistrate decide?
