

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2003

CRIMINAL PRACTICE AND PROCEDURE

(FRIDAY, MAY 23, 2003)

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, 2003, at 9:00 p.m. Miss Nicholls was walking on the street towards her home when a man snatched her handbag and necklace and ran into the nearby bushes. The incident took place under a street light and Miss Nicholls was able to see his face. She recognised him as Hancock, a handyman whom she had known for about five (5) years. Miss Nicholls reported the matter to the police. On January 15, 2003, Hancock was arrested and charged.

On January 20, 2003, Miss Nicholls was in a jewellery store when she saw and recognised her necklace in a showcase. She telephoned the police. On the arrival of Constable Quick, Miss Nicholls in the hearing and presence of Mr. Kamar, the owner of the store, identified and claimed the necklace as the one that was stolen from her on January 10, 2003. Constable Quick asked Mr. Kamar to account for his possession of the necklace. Mr. Kamar refused to answer except to say that he wanted to consult with his lawyer. He was also arrested and charged.

Draft an indictment against Mr. Hancock and Mr. Kamar to be presented in the Supreme/High Court.

QUESTION 2

- (a) Sidoli was charged for robbery. At the close of the prosecution's case, counsel for Sidoli submitted that the indictment was not signed and therefore the proceedings were a nullity. The trial judge rejected defence counsel's submissions and directed prosecution counsel to sign the indictment. This was done and the trial proceeded. Sidoli was convicted.

He wants to know if the trial judge erred in rejecting the submission of counsel and in proceeding with the trial.

Advise Sidoli.

- (b) Hussein, Busher and Woodhead were charged with arson. Shortly after they were charged Hussein absconded. After the preliminary enquiry had commenced Hussein was recaptured. The Magistrate read over the depositions taken so far and invited counsel for Hussein to cross-examine the witnesses. The witnesses were accordingly cross-examined. The three accused persons were committed to stand trial. They now appear before the High/Supreme Court indicted for arson. Hussein wants to know if his committal and subsequent indictment are valid.

Advise Hussein.

QUESTION 3

King was charged with a road traffic offence which is triable either on indictment or summarily. The prosecution elected to proceed summarily. King pleaded not guilty and his counsel immediately moved for dismissal of the charge on the ground that the prosecution of it summarily was not brought within the statutory period.

The magistrate permitted counsel for the prosecution to withdraw the information against the objection of counsel for the accused, and lay a new one on which a preliminary hearing was held. King was eventually tried and convicted having failed in his plea of *autrefois acquit*. King appealed.

The question for the decision of the Court of Appeal was whether the accused was entitled to succeed on the plea of *autrefois acquit*.

Write an opinion as to whether or not the plea in bar should succeed.

QUESTION 4

Furey was charged on an indictment for wounding with intent. On arraignment he pleaded not guilty to the offence charged but guilty to the lesser offence of unlawful wounding. The trial judge approved the acceptance of the plea to the lesser offence and the plea was entered. Upon hearing the background to the charge as outlined by the prosecution the judge changed his mind and directed the trial to proceed.

The defendant was tried and acquitted of wounding with intent. The lesser offence of unlawful wounding was not left to the jury. The judge then on the basis of the defendant's earlier plea of guilty to "unlawful wounding" ordered that another count for this be added to the indictment. This was done. The judge thereafter imposed a fine of \$15,000. Furey wishes to appeal and wants to know if he has any good grounds of appeal.

Advise Furey.

QUESTION 5

Samson and Kelly were indicted for robbery with aggravation. The jury was selected in breach of the balloting procedure prescribed by law. Counsel for the defence made no objection. During the trial the judge permitted the prosecution to read the statement of a material witness pursuant to a statutory provision. That provision permitted the reception in evidence of the statement of a witness who was shown to the satisfaction of the court, to be out of the jurisdiction.

During the retirement of the jury the missing witness arrived in court and gave an explanation for his late arrival that was inconsistent with the finding that he had been out of the jurisdiction. Counsel for the defence sought permission to cross-examine the witness. His request was refused by the trial judge on the ground that once the jury had retired they should not be given any additional evidence. Counsel then submitted that the judge should discharge the jury. This request was also refused. Samson and Kelly were convicted and sentenced.

They want to know if they have any good grounds of appeal.

Advise Samson and Kelly.

QUESTION 6

Karl, a police officer, was convicted of obtaining property by deception and sentenced to two and a half years imprisonment. While giving evidence he had made an allegation about a witness which had not been put to the witness during cross-examination owing to a misunderstanding between Karl and his counsel. In his summing up the judge made adverse comment about that failure and Karl's

QUESTION 1

In May 2002, Marsha advertised on the College notice board for a tenant for her vacant apartment at 25 Victoria Road. Nigel, an overseas student, having seen the advertisement and wishing to secure accommodation for the new academic year beginning in September 2002, phoned Marsha and expressed an interest in viewing the apartment.

In early June 2002, Marsha met Nigel at the apartment. She told him that the rental would be \$5,000 per month and that as the apartment was currently under repairs he could move in, in three months time. This arrangement suited Nigel perfectly and so he agreed. In August he wrote to Marsha to confirm the arrangements.

In early September 2002, before the new academic year had begun Nigel telephoned Marsha from his home abroad to inform her that he was returning to the College in a week's time and therefore expected to take possession of the apartment at that time. Marsha replied, however, "I am sorry, I have changed my mind about the letting and anyway I have sold the apartment with vacant possession to Peter for \$1.8M."

Advise Nigel as to his rights, if any, in relation to the apartment.

QUESTION 2

You have been asked by a client landlord to draft a lease for use in respect of residential premises. The house has recently been built and the term will be for

ten years and will be let unfurnished. The premises are not subject to rent restriction legislation but are subject to registered land legislation.

Outline the form and contents of your draft with explanatory notes.

QUESTION 3

In 2000, Powell entered into partnership with his brother, Earnel, an attorney-at-law, for the purpose of carrying out the business of computer repairing. The partnership was called Tectronics Associates. In the same year (2000) Tectronics Associates purchased the freehold title to a unit in a business complex.

In 2002, the brothers fell into disagreement and decided that while they would formally continue carrying on the partnership from the office for taxation purposes, the day to day running of the business would be Powell's responsibility as he was the technician. To make full use of the office space, however, it was agreed that the partnership would grant Earnel a lease of half of the office space from which he would conduct his law practice.

Earnel then went into possession at a rental of \$15,000 per month. Three months later both parties executed a lease, which contained the following provision:

"That the lessee shall from this day (November 1, 2002) be entitled to exclusively possess the premises demised herein until such time as the Tectronics Associates partnership shall cease to exist and at a rental of \$240,000 per year payable monthly since taking up possession."

Earnel, however, has continued to pay to Tectronics Associates the rental of \$15,000 per month in advance which Powell has paid into the business account of Tectronics Associates.

Earnel is anxious to show that the 2002 lease is void and that there exists instead a periodic monthly tenancy because by so doing he would be able to escape liability to pay the higher rent under the lease.

Advise Earnel.

QUESTION 4

For five years, Bertie has been the monthly tenant of a studio apartment in a complex owned by Jerry. Jerry was also the owner of an adjoining complex. Recently, Jerry joined the two complexes together and converted them into a hotel. The use of the building as a hotel has resulted in the residents and the general public coming and going as participants at various social activities including the regular use of the swimming pool and the disco which is not adequately sound proofed.

This has caused Bertie to complain frequently to Jerry about the noise and disturbance caused by the residents when they return to their apartments late at nights as well as from the social events which occur at nights at the hotel.

Bertie (who is still a monthly tenant) recently came to see you on the brink of a nervous breakdown. He wishes you to advise him in this matter.

Advise Bertie.

QUESTION 5

In January 2003, Sharon leased from Nicole, for five years, a one-bedroom apartment in a four-storey block of apartments, which is part of a condominium/strata complex. The apartment is on the ground floor and is not subject to rent restriction legislation. The lease stated that Sharon was entitled to the use of a parking space in the residents' parking area.

The lease also contained, *inter alia*, a covenant by the tenant –

“to keep the interior of the leased premises and all the leased fixtures, fittings and glass therein in good tenable repair.”

There was no covenant on the part of the landlord to carry out any repairs.

Sharon tells you that soon after she went into possession, she noticed moisture and flaking and discolouring on the ceiling of the bedroom, bathroom and the kitchen. Approximately two weeks later water began to drip from all three ceilings.

Last week, she spoke to Nicole who told her that it was not her responsibility to repair the various leaks as they were coming from the apartment above and that she should discuss the matter with Phill, who was the owner and occupier of that apartment.

She therefore spoke to Phill who told her that the water dripping in the bedroom and the bathroom in the apartment she occupied came from an abandoned pipe running between the horizontal-dividing wall between the two apartments. Phill further explained that the management corporation had nine months earlier, abandoned the use of all the old pipes in the building, but that pipe had not been properly sealed, hence the leaks. The management corporation, however, was

of the view that the pipe was no longer their responsibility, but that of the two owners.

With respect to the leak in the kitchen, Phill explained that as far as he was aware that leak came from the pipe leading from the water heater, which runs in the ceiling and therefore was a problem with respect to that apartment only.

Sharon also tells you that she is unable to park her car in the parking area designated for residents which is a secured area but has to park in the visitors parking area which is unsecured.

Sharon now seeks your advice.

Advise Sharon.

QUESTION 6

On January 31, 1996, Thomas demised a two-storey commercial building (located on registered land) to Box, for a term of 15 years. Rent of \$15,000 to be paid monthly in advance.

By the lease Box covenanted inter alia:

- (a) to use the building for a book shop and for business relating thereto;
- (b) not to use the premises (nor suffer or permit the same to be used) for any unlawful or immoral purpose.

In March 2003, it came to Thomas' attention that:

- (a) Box's wife, Bertha, has recently been in trouble with the police for selling obscene magazines and videos in the shop. Box has actively encouraged his wife in this new venture;
- (b) Mary Jones is occupying the upper floor of the building as a sub-tenant. There is strong evidence that she is using the premises for the purpose of a sensuous massage parlour and that Box has turned a blind eye to this.

The rent, which was due on April 30, in advance, was duly paid by Bertha on behalf of her husband, Box.

Thomas would like to forfeit the lease and has now sought your advice.

Advise Thomas.

QUESTION 7

On March 10, 1999, Yohan granted to Tammy, a medical practitioner, a lease of premises comprising two buildings thereon, the main house and the other an annex, at a yearly rent of \$300,000 payable at the end of every year. Tammy occupies the main house as her residence and the annex as a doctor's office. In 2002, Yohan was paid the rent only after he threatened to levy distress on Tammy's goods. The rent payable in March 2003 is still due and unpaid, in spite

of several requests by Yohan for payment. Yohan has now consulted you and says he would like to levy distress on the following –

- (i) some medical text books in the annex;
- (ii) the bedroom and living room furniture in the "main house";
- (iii) some paintings in the "main house" kept in place on the walls of the building by screws;
- (iv) whatever cash is found on the demised premises;
- (v) a motor car, the property of Tammy, now parked in the yard of Tammy's friend, Lucy. Yohan has discovered that this vehicle was removed by Tammy from the garage of the "main house" and taken to Lucy's residence so that Yohan, should he decide to levy distress, would not find it on the demised premises.

Advise Yohan.

QUESTION 8

- (a) Your client, David, is a happily married man with five children and is a deacon in his church. He has discovered that one of his tenants, Benny, a married man, who has let a dwelling house from him (which is subject to rent restriction legislation) is now living in the house with his mistress, Angie, and their children, although Benny had agreed that children would not live there. Further, it has been brought to David's attention that Angie is using the helper's room as an outlet for "adult toys."

In the circumstances, David is very distressed and has sought your advice as to whether he can terminate the ~~tenanc~~

Advise David.

- (b) In 2000, Carol inherited a dwelling house (which is subject to rent restriction legislation) from her aunt. The house, which was in a poor state of repair and had been so for many years, is let to Ira.

In January of this year (2003), Carol got an estimate to carry out repairs to the building and these repairs were carried out between February and April. The following repairs were carried out –

- (i) the roof on the verandah was replaced and new rails were put around the verandah;
- (ii) large cracks in the walls were filled in;
- (iii) a new kitchen built of hollow blocks was erected in place of the original kitchen, the walls of which had fallen down;
- (iv) both the interior and exterior walls of the building as well as the ceilings were painted.

The repairs having been completed at a cost of \$100,000, Carol now wishes to increase the rent of the premises. She has sought your advice.

Advise Carol.
