

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2004

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 17, 2004)

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

Hassan and Kotash attacked Hammel with knives and wounded him. Hammel ran and locked himself in his office. Hassan and Kotash threatened to kick down the door if Hammel did not come out.

Hassan went to the back of the building. Without the knowledge of Kotash, he climbed through an open window and entered a room adjacent to Hammel's office. He quietly crept up behind Hammel and stabbed him in the back, thereby inflicting a serious injury.

Hassan and Kotash were arrested and charged in respect of the injuries inflicted to Hammel.

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

QUESTION 2

Andy, Bert and Carl were riding their motor cycles abreast along a public road and by riding in that formation had been an annoyance to other road users. They together entered a 50 km/h. speed limit zone each cyclist traveling at 80 km/h. Carl collided with a pedestrian who was knocked to the ground.

Three separate informations charged each with driving at a speed exceeding the speed limit. A fourth information charged Carl with dangerous driving.

All these offences are triable summarily before a Magistrate. At their trial in the Magistrate's Court the prosecution seeks leave to try all four informations

together. Counsel for the defence objects, contending that the Magistrate has no jurisdiction so to do.

How should the Magistrate decide?

QUESTION 3

Contra was outraged by the conduct of Patrick who had testified falsely against him. Contra and Petro decided to go to Patrick's house to attack him.

Later Patrick was seen at his house bleeding profusely and had to be sent to the hospital. Contra was seen in a parked car with Petro near the house of Patrick. As a police constable approached the car both men alighted from the vehicle and ran. The constable gave chase and Contra was held; Petro escaped.

Contra admitted to the police that he had attacked Patrick with a knife. At the police station he was searched and found to be in possession of a knife and prohibited drugs.

Contra was charged on an indictment containing counts for:-

- (a) assault occasioning actual bodily harm;
- (b) possessing an offensive weapon;
- (c) possessing a prohibited drug without authority.

(These offences are all indictable.)

Despite the objection of Contra's counsel, these counts were tried together. The prosecution's case was that Contra had taken the drug to get himself into a suitable frame of mind to commit the assault.

Contra was convicted and sentenced. He now wishes to know whether or not the counts were properly joined in one indictment.

Advise Contra.

QUESTION 4

- (a) Following Mary's death in a motor vehicle accident, John was charged on indictment with the offence of manslaughter and summarily with the lesser offence of dangerous driving.

At the close to the preliminary enquiry into the charge of manslaughter, the magistrate found that no prima facie case had been made out and discharged John. At the hearing soon thereafter of the summary charge of dangerous driving, John pleaded guilty and was sentenced.

The Director of Public Prosecutions/Attorney General wishes to proceed on indictment with the offence of manslaughter against John.

Write an opinion outlining whether either the plea of *autrefois acquit* or the plea of *autrefois convict* would avail John.

- (b) With reference to the facts in (a) assume:
- (i) that Mary did not initially die in the accident;
 - (ii) John was charged only with dangerous driving; he pleaded guilty and was sentenced;

- (iii) soon after John was sentenced for dangerous driving Mary died;
and
- (iv) the Director of Public Prosecutions/Attorney General then decides to charge John with the offence of manslaughter.

Would your opinion be any different to your opinion in (a)? Give reasons.

QUESTION 5

During the course of Ted's trial for burglary and larceny, the jury sought and obtained permission to visit the house where the alleged burglary and larceny took place.

Attorneys-at-law for the prosecution and defence did not object. The trial judge did not consider it necessary for him to attend.

At the said house in the presence of the attorneys-at-law and the accused, the jury asked certain questions of witnesses who had already given evidence, to which they received answers. The jury thereafter returned to court. At the end of the trial they retired to consider their verdict.

Within one hour after retiring, the jury sent a note to the trial judge requesting:-

- (a) further information on issues raised during the visit to the house; and
- (b) a magnifying glass to assist them in looking at certain documents that were tendered in evidence.

The trial judge by a note in reply, informed the jury that he could not furnish any further information on the visit to the house and that they must deliberate only on

the evidence adduced in court. He, however, instructed the Registrar of the Court to furnish the jury with a magnifying glass as requested.

The jury after deliberating for a further hour, convicted Ted. He was sentenced to 10 years imprisonment.

Ted wishes to appeal his conviction and sentence. Advise him as to the merits of any such appeal.

QUESTION 6

Leebert was charged with two counts of carnal abuse of a girl above the age of 12 and under the age of 16 years.

At the time of the trial the complainant was 15½ years old. When she was called to give evidence the judge attempted by a series of questions to establish her capacity to understand the importance of telling the truth. Concluding that she did not understand the significance of the oath, he decided that she could not give sworn evidence. She accordingly gave her evidence unsworn. Another witness was called who corroborated the evidence of the complainant. Leebert was convicted.

Leebert is of the view that the procedure followed by the judge in dealing with the complainant was wrong and seeks your advice.

Advise Leebert.

QUESTION 7

Jim is charged with a traffic offence. The complaint/information alleges that on Friday, March 5, 2004, at City Airport, Tropical Isle, Jim, "unlawfully parked motor vehicle CAR 2022 elsewhere than in a place provided for that purpose and otherwise than in a manner required by an authorized 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 authorized officer".

Jim tells you that on March 5 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 with the offence.

- (i) Advise Jim whether the complaint/information is duplicitous.
- (ii) Assuming that the complaint/information did not contain the relevant section but merely stated that the offence was "contrary to the Road Traffic Act", is the complaint/information valid? Give reasons.

QUESTION 8

During his trial for murder, Jack changed his plea to one of guilty of manslaughter. His plea was accepted by the prosecution and the trial judge.

The judge directed the jury to find Jack not guilty of murder but guilty of manslaughter. The jury, however, had their own ideas and made it clear they did not consider Jack guilty of either crime. The judge sent them back to their room to reconsider. The jury were sent back to the jury room three times but refused to find Jack guilty of the admitted charge.

The jury came back into court and one of them told the judge, "The only reason he has pleaded guilty to manslaughter, is out of remorse. If you send this man to prison it will ruin his family."

Finally, the judge discharged them from giving any verdict and treated the case as a straightforward plea of guilty, giving Jack a two-year suspended sentence.

Write an opinion indicating whether or not the course taken by the judge was proper.
