

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2005

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 16, 2005)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

On May 10, 2005, Dorothy, Sophia, Blanche and Rose went to "The Palace" the largest variety department store in the capital city of your country. They went to the first floor where ladies apparel are sold and stole two dresses, three blouses, and several ladies undergarments.

They then went to the second floor where watches and jewellery are sold. They stole several watches, chains, rings and other items.

As they were leaving the store, Rose pulled a knife from under her dress and stabbed the security guard who was at the door. Dorothy, Sophia and Blanche expressed surprise that Rose had a knife and reprimanded her for using it.

The security guard suffered a serious wound to the chest inflicted by the knife.

All four women were later apprehended by the police.

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

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## QUESTION 2

Jake was arrested by the police. The police alleged that last Friday he beat his girlfriend, Carol, breaking her arm in the process. When Jake got to the police station he was formally charged with assault occasioning grievous bodily harm and processed by the officer in charge of the station.

He asked the police to give him bail, but the police officer on duty laughed at him.

Jake's mother, Annie, then turned up at the station with a justice of the peace.

She asked the officer in charge to allow her to see Jake and said that she wanted the justice of the peace to grant bail to Jake. The police refused this request and told Jake's mother that they had no time to waste, and that she should speak to the magistrate tomorrow.

The next day when Jake was taken before the magistrate he made an application for bail. The magistrate informed Jake that she did not think that this was an offence for which bail could be granted, that in any case she did not have the authority to grant bail to anyone and that this should be left to a judge of the High Court. The magistrate then adjourned the matter.

Jake was then taken away to the remand centre to await trial.

Jake's mother Annie now comes and retains you as Counsel for Jake. She indicates that Jake cannot understand why he has been unable to obtain bail.

Advise Jake with respect to the refusals of bail and as to whether he can still pursue the grant of bail in this matter.

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### QUESTION 3

Patrick and George were being tried together for conspiring with each other and with others unknown to defraud. During the trial George, alleged to be at the hub of the conspiracy, absconded. The trial proceeded in his absence.

The day after George absconded there was a conversation on a bus between a clerk of Patrick's attorney-at-law and a person whom the clerk discovered later to be a juror. There was a reference to the trial during the conversation. It was

alleged that the juror told the clerk that there were too many white-collar crimes. This conversation was brought to the attention of the judge by Patrick's attorney-at-law.

The judge decided following an enquiry and without objection from both defence and prosecuting counsel that the juror had done nothing wrong and should not be discharged. He warned the jury not to discuss the matter further.

However, subsequently, the juror told the foreman that the original conversation with the clerk was "relevant". The foreman informed the judge of this.

Following a further enquiry in which the jurors all said that they were not influenced by anything concerning the conversation, or by any reference to it, the judge declined to discharge the juror or the jury.

Patrick and George were convicted and sentenced, in the case of George, his conviction and sentence being *in absentia*.

After the trial concluded George was recaptured.

Patrick and George now wish to know whether or not the judge erred in:

- (i) proceeding with the case after George absconded; and
- (ii) declining to discharge the juror or the jury.

Advise Patrick and George.

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#### **QUESTION 4**

John Stokes was indicted before a judge for wounding (count 1) and malicious damage to property (count 2). He was convicted on count 1 and acquitted on count 2.

After sentence was passed on count 1 it was brought to the attention of the judge that the virtual complainant in respect of both counts had neither taken the oath nor affirmed. As a result, the judge recalled the case and was about to hear the evidence afresh when counsel for Stokes entered the pleas of *autrefois convict* and *autrefois acquit*.

As the judge's clerk advise him.

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#### **QUESTION 5**

Abbott and Costello were indicted for murder. On the February 10, 2005, the jury found Abbott guilty of manslaughter and Costello guilty of murder. Abbott was sentenced to be imprisoned for life and Costello to death. On February 13, 2005, Abbott filed a notice of appeal against conviction and sentence.

On February 15, 2005, counsel advised Abbott against pursuing the appeal.

Based on that advice two days later, Abbott filed with the Registrar a notice of abandonment of his appeal. However, Abbott having been advised by another counsel that he had a good ground of appeal, on February 18, 2005, sent another notice of appeal to the Registrar in which he stated that he wished to re-open the appeal and was therefore withdrawing the notice of abandonment.

On March 2, 2005, Costello 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 Abbott and Costello.

## QUESTION 6

A car driven by Singer Jay was stopped by the police at a road block. Jah T and Conscious were passengers in the car. Constable Smellie asked all three men to get out of the car. The constable told them he was going to search the car and frisk them. He searched the car but nothing incriminating was found. He then frisked the men. In the trousers pocket of each man he found a small parcel containing ganja. Constable Smellie asked them where they were coming from. They refused to answer. He arrested and charged each of them for possession of ganja.

Three informations/complaints were laid, one in respect of each defendant. At the trial before a magistrate the prosecutor applied to the court for leave to have the three informations/complaints tried at the same time. The application was not opposed by counsel for the defence. In fact, he told the court that it would be a waste of time to have three trials. The magistrate granted the application. All three defendants were convicted.

They now seek your advice as to whether or not the magistrate erred in allowing the informations/complaints to be tried together.

Advise the defendants.

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## QUESTION 7

Johnny Bravo is on trial for the offence of unlawful carnal knowledge of his 15 year old neighbour. After he was arraigned, the jury was selected and he was put in their charge. It was brought to the attention of prosecuting counsel that the

foreman of the jury knew Johnny Bravo to be a fellow who hung out with prostitutes and frequented places of ill-repute.

Further, when it was time to retire to consider the evidence and render a verdict, juror number five told the other jurors that it was his birthday. He asked the registrar of the court to allow him to make a phone call to his wife. This was allowed. He then pulled out a cell phone which he had on him all during the trial, went into a private bathroom and made the call to his wife.

When juror number five returned to the jury room the entire panel continued deliberations. When they got to difficult points of law they recalled the judge's directions and followed them. However, juror number three took out a ouija board given to her by Ms. Cleo, a noted psychic. All the jurors gathered around and asked several questions of the ouija board regarding the trial. When asked whether the accused was guilty or not, the ouija board indicated not guilty.

After deliberating for a further three hours the jury came back with a verdict of guilty as charged.

Johnny Bravo was sentenced to five years in prison with hard labour. His attorney, Mr. Mark Careful, has now learnt of what transpired in the jury room.

Advise Mr. Careful as to any irregularities that may have taken place with regard to the trial and whether or not these irregularities are sufficient to ground an appeal.

## QUESTION 8

Stealer was charged with being in possession of housebreaking implements by night. In his opening speech, counsel for the prosecution told the court that the accused was found at 1.00 a.m. on the night of April 5, 2005 with a picklock, a jack and a bit. At the close of the prosecution's case, counsel for the accused submits that there was no case for his client to answer in that there was no evidence from the witnesses as to the time when his client was allegedly found with the housebreaking implements.

Prosecuting counsel conceded that he inadvertently omitted to elicit such evidence. He applied to the court for leave to re-open the prosecution's case. Counsel for the defence strongly opposed the application. The trial judge granted the application. The police officer was recalled and he testified that the accused was found with the implements at 1.00 a. m. on April 5, 2005.

In his defence, Stealer testified that at 1:00 a.m. on April 5, 2005, he was inside the Junction nightclub. On the prosecution's case all that had been suggested to the prosecution witnesses by Stealer's counsel was that the incident never happened. After the evidence for the defence, the prosecution successfully applied for leave to call evidence in rebuttal of Stealer's alibi.

Stealer was convicted and sentenced. He now wishes to appeal.

Write an opinion as to whether or not the trial judge erred in –

- (i) permitting the prosecution to re-open the case after the no-case submission;
- (ii) permitting the prosecution to call evidence in rebuttal.