

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2006

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 15, 2006)

Instructions to Students

- (a) Time: **3½ 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

Quick Temper and John Provoke had a quarrel over a cellphone on January 5, 2006. During the quarrel, Quick Temper threatened to kill John Provoke. The following day at about 10:00 p.m. Temper broke and entered the dwelling house of Provoke. He saw Provoke asleep in bed. Temper tiptoed up to the bed and stabbed Provoke in the chest with a ratchet knife. Provoke succumbed to the injury immediately. Shortly thereafter a neighbour, Miss Lux, saw Temper leaving Provoke's house with a knife in hand. She telephoned the police and made a report. Temper was subsequently arrested and charged.

Draft the indictment to be preferred in the Supreme/High Court. Explain your draft in not more than 50 words.

QUESTION 2

Answer **two** of the following:

- (i) Humpty is indicted for arson. 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 for cause.

Advise Humpty.

- (ii) John was charged with exceeding the speed limit. His attorney-at-law stated at the beginning of the hearing that the issue was one of identity. No evidence was given identifying John as the driver. A submission of "no

case” was overruled. The defence called no evidence. The Magistrate then allowed the prosecution to re-open its case by calling a police officer who said that John had admitted that he was the driver of the car. John was convicted. He seeks your advice as to whether or not the Magistrate was right in allowing the prosecution to re-open its case.

Advise John.

- (iii) Fry, on arraignment for shooting with intent, stood mute. A jury was empanelled to determine whether he was mute of malice or by visitation of God. The jury found the latter. The issue of Fry’s fitness to plead now arises.

The judge wishes to be advised as to the course to be taken to determine this issue and as to the basic criteria of the test for the said issue of fitness to plead.

Give your advice.

QUESTION 3

A, B and C were jointly charged with rape. At the close of the Crown’s case the accused persons elected to give evidence on oath. During cross-examination, Counsel for the prosecution asked A: “Did you not tell the police that B and yourself were with the victim just before she was raped?” Counsel for the defence objected to the question. The judge asked the jury to withdraw and directed that A be taken out of court and out of hearing. After hearing submissions the judge ruled that the question was inadmissible. The jury was

recalled and A was brought back. The judge was told that during the break one of the jurors was assaulted and admitted to hospital. The judge discharged the juror and after conferring with counsel, arranged police protection for the rest of the jury, having warned them not to hold any of the defendants responsible for the assaults.

A, B and C were eventually convicted and sentenced. They now seek your advice as to whether or not they have any good ground of appeal.

Advise A, B and C.

QUESTION 4

Burrowes, Latimer and Putman were jointly charged on indictment with larceny/theft (count 1) and receiving/handling (count 2). The jury by their verdicts found all not guilty in respect of count 1 and Burrowes guilty in respect of count 2.

The judge felt that the verdicts were inconsistent and asked the jury for explanation.

The foreman explained that they thought that they could not convict anyone of larceny/theft unless all were convicted and since they were not prepared to convict all, they therefore acquitted all.

The judge gave them further directions and sent them back. The jury returned with a finding that Latimer was guilty of count 1 but not Burrowes and Putman, and that Burrowes was guilty of count 2 but not Latimer and Putman. Latimer

and Burrowes wish to appeal and want to know if they have any good grounds of appeal.

Advise Latimer and Burrowes.

QUESTION 5

CM, a Detective Corporal of Police, was jointly charged with Constable N for the murder of PH. The jury acquitted Constable N, but found CM guilty.

During the trial a hostile crowd flocked the corridors of the court and made remarks which were clearly defamatory of CM in the hearing of the jurors. Counsel for the defence brought this to the attention of the judge in chambers. On the resumption of the hearing the learned trial judge addressed the jury advising them of their duty to bring immediately to his attention any conduct tending to intimidate or induce them to come to a particular conclusion. At no time did the foreman bring any such conduct to the attention of the trial judge.

After the trial it was discovered that the foreman of the jury was a convicted felon, in that he was convicted of stealing monies entrusted to him, falsification of accounts and embezzlement.

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

QUESTION 6

- (a) Gairy and Emery were jointly charged with wounding with intent. On arraignment Emery pleaded guilty and was sentenced. Gairy pleaded not guilty. A jury was empanelled. After the summing-up the jury retired to consider their verdict. They returned after 30 minutes and stated that they would like to see the co-defendant Emery who had pleaded guilty. The co-defendant was thereupon brought into the dock. The jury again retired. They returned with a unanimous verdict of guilty. Gairy was sentenced to a term of imprisonment.

He wishes to appeal and wants to know if the trial judge erred in granting the request of the jury to see his co-defendant.

Advise Gairy.

- (b) Pinner is charged summarily with dangerous driving. He informs the Clerk of Court that he desires to plead guilty to careless driving. The Clerk wishes to accept the plea and wants to know how to proceed.

Advise the Clerk of Court.

QUESTION 7

At the conclusion of a preliminary enquiry, Follet was committed to stand trial on two charges of burglary and robbery with aggravation arising out of offences committed on the same date but unrelated to each other.

He was accordingly indicted for burglary (count 1) and robbery with aggravation (count 2). The indictment was inadvertently not signed by the proper officer. On the day of the trial, Follet, when arraigned, pleaded not guilty to both counts. The prosecution thereupon applied for severance of the indictment and separate trials of the two counts on the ground that they were improperly joined.

The defence submitted that the better course would be to quash one of the two counts. The court ordered separate trials. A jury was then empanelled to try the burglary charge. Follet was convicted and sentenced. He is dissatisfied with his conviction and sentence.

(a) Advise Follet.

(b) If, instead, the Court had quashed one of the counts as submitted by the defence and proceeded thereafter in like manner and Follet was convicted and sentenced, would your advice be any different?

QUESTION 8

John Speed was charged on information/complaint for breach of a regulation made pursuant to the road traffic legislation. The particulars of the offence as charged were that he on January 10, 2006, in the parish of St. Andrew drove a motor vehicle with a defective tyre and steering on a public road.

At the trial John pleaded not guilty. The prosecution called two witnesses in support of the charge. At the end of the prosecution's case, counsel for the defence submitted that the information/complaint was bad for duplicity. Prosecuting counsel conceded that the information/complaint was duplicitous.

However, he applied to the court for an amendment of the information/complaint to delete the words “and steering”. This application was strenuously opposed by counsel for the defence who submitted that the court had no jurisdiction to amend a duplicitous information/complaint. The magistrate granted the amendment as prayed. John was eventually convicted and sentenced.

John is of the view that the magistrate erred in rejecting his counsel’s submissions and seeks your advice.

Advise John.

Would your advice be any different if the application for the amendment was made immediately after John had pleaded not guilty and before any evidence was led on behalf of the prosecution?
