

FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2007

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 14, 2007)

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 question you attempt.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

After a lengthy trial, Pearl White was convicted of the offence of murder for which she was liable to be sentenced to death. This offence was committed before she attained the age of 18. After the verdict was returned, Pearl fainted in court and had to be taken to the doctor. The trial judge postponed sentencing to the following week. After Pearl was treated by the doctor she learnt that she was pregnant.

Pearl's attorney-at-law has sought your advice on the following -

- (i) The procedure to be adopted at her sentence hearing.
- (ii) The current state of the law in relation to the sentencing of persons liable to suffer death for murder which was committed before attaining the age of 18.

Advise Pearl's attorney-at-law.

QUESTION 2

At the preliminary enquiry/committal proceedings, after hearing ten witnesses for the prosecution, John Black was committed to stand trial for the offences of burglary and larceny/theft and indecent assault. When he turned up for his trial, the indictment preferred against him had two counts: count one charged him with robbery with aggravation and count two charged him with rape. His attorney-at-law, Miss Cantankerous, submitted in her usual vigorous style that her client could not be tried on this indictment because he was not committed to stand trial for the offences charged in the indictment. Mr. Meek, attorney-at-law for the prosecution, was nonplussed. The trial judge granted the prosecution an

adjournment. Mr. Meek now seeks your advice. In fact he wishes that you prepare written submissions for him. You agree.

What is your advice to Mr. Meek?

QUESTION 3

Bailey stands charged before the High/Supreme Court on an indictment containing one count of rape. He has been put in the charge of the jury duly empanelled to try his case. When the indictment was read to him he pleaded not guilty. Before any evidence was given, the court was adjourned for lunch.

During the adjournment attorney-at-law for the defence informed Crown Counsel that his client wishes to plead guilty to the lesser offence. Crown Counsel does not object, but suggests that they both inform the trial judge of the situation, in chambers. After listening to both Counsel, the trial judge made it clear that although the complainant was under the age of consent at the time in question, she strongly disapproves of the proposed course of action, as she was of the opinion that there was no proper basis for accepting a plea to the lesser offence.

You have been asked to advise on the following -

- (i) the general issue of plea of guilty to a lesser offence;
- (ii) the respective roles of the trial judge and prosecutor; and
- (iii) the procedure to be adopted when the issue of plea of guilty to a lesser offence arises for consideration.

Advise accordingly.

QUESTION 4

Antonio Louis arrived in the West Indies as a tourist for Cricket World Cup 2007. He had been island hopping. When he arrived in one of the territories he and his friends rented a car. On one of the days when no match was being played they took a car tour of the territory. While traveling through a rural parish he was pulled over by the police, who issued him with a document, which charged him for driving carelessly.

By the document, he was required to attend before the magistrate's court for the parish, four weeks later. Unfortunately for Louis, he was to depart that territory for another before the court date. He was advised by his friends to seek the assistance of an attorney-at-law. While driving through the capital town of the parish he came upon the office of Mr. Adept Debater, attorney-at-law. Luckily, he was able to get an immediate appointment to see Mr. Debater.

After Louis explained his plight, Mr. Debater accepted a retainer and advised him that he would make an application for an earlier date, as the traffic court for the parish was scheduled to sit in a week's time.

Mr. Debater succeeded in his application for an earlier date due to the fact that Louis was a tourist. On the court date, Mr. Debater examined the case file and observed that the only document on it was an outline of the circumstances surrounding the charge, brought by the prosecutor. The officer who charged Louis (who is the only witness for the prosecution) was absent. Mr. Debater submitted that his client was appearing under protest, as he did not submit to the jurisdiction of the court and that he should be discharged because there was no proper process commencing the charge against him.

The presiding magistrate has reserved her ruling, in order to advise herself on the law. A reporter was present in court when the matter was dealt with, and the

case became a headline story. Another visitor, Robert, is now curious about the case. He has sought your advice on the proper procedure to be followed –

- (i) Answer EITHER (a) OR (b) -
 - (a) in commencing and prosecuting the offence charged, specifically;
OR
 - (b) in commencing and prosecuting a charge before the magistrate's court, generally;
- (ii) when the defendant does not appear on the date set for trial in a case as in either (a) or (b) in (i) above;
- (iii) when the defendant appears and the informant/complainant does not appear in a case as in either (a) or (b) in (i) above.

Advise Robert.

QUESTION 5

Sally was attacked by Peter and Paul, while she was standing on the piazza of their office building. She was severely beaten by them. They accused her of stealing from them. She sustained a broken arm as a result. In her attempt to escape their attack, she ran inside their office and locked the door behind her. Both men threatened to kick down the door if she did not come out.

Peter went to the back of the building without the knowledge of Paul and climbed through an open window and entered the room in which Sally was hiding. He proceeded to chop off four of her fingers.

Peter and Paul were arrested and charged in respect of the injuries inflicted upon Sally.

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

QUESTION 6

Answer both (a) and (b).

- (a) John Stone is charged with the offence of robbery with aggravation, to wit: that while in the company of another he robbed a cashier of Super Supermarket of certain sums. You have been assigned to defend Stone. During the empanelling of the jury Stone informs you that one of the potential jurors called to the jury box is related to a cashier employed to a different branch of the supermarket. You have already exhausted your peremptory challenges. What course is now open to you?
- (b) The evidence to be led by the Prosecution against Stone includes a statement contained in an alleged confession, which Stone claimed he gave after he was severely beaten by the police. What is the procedure to be adopted at the trial in respect of the alleged confession?
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QUESTION 7

Engulf and Devour, two notorious criminals, were finally held after ten years on the run. They had in their possession an object believed to be a firearm. They were charged with the offences of illegal possession of firearm, rape and robbery. The trial proved to be quite a battle royal. Among the eyewitnesses called was a boy of ten years. After ten days of evidence the prosecution closed its case.

During defence counsel's no case submission, the prosecution applied to reopen its case, to tender the Ballistic Certificate that would prove that the object recovered from both men was indeed a firearm, or, in the alternative asked that the judge exercise his power to call the relevant witness, through whom the certificate could be tendered. Defence counsel objects strongly to this. The learned trial judge has reserved his decision.

- (i) Advise the judge.

 - (ii) What is the procedure to be adopted in respect of the ten year old witness?
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QUESTION 8

Forger has just been convicted in the Supreme/High Court on an indictment charging ten counts of uttering a forged document. He has been sentenced to ten years imprisonment. He was represented at the trial by Lose Dem All. When he was sentenced and while he was being taken out of the dock, Forger asked whether he could appeal the verdicts and sentence.

One week later, Forger retained Keen Eye to deal with the appeal, who promptly filed a Notice of Appeal which was signed by Keen Eye. However, after dialogue with Lose Dem All, Keen Eye concluded that there were no reasonable grounds of appeal. Forger was advised accordingly. He instructed Keen Eye to withdraw the Notice of Appeal.

Three months later, when the transcript became available, Keen Eye discovered that there were substantial grounds on which he could appeal. Forger now wishes to pursue his appeal and has sought your advice.

Advise Forger.
