

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2008

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 12, 2008)

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

On April 5, 2008, at 10:00 p.m. Sleight and Slim entered the dwelling house of Mary Rest by breaking off the lock of the back door. Both had guns in their hands.

Mary had locked the door before she had retired to bed at 8:00 p.m.

Both men entered Mary's bedroom and Sleight turned on the light, pointed his gun at her and robbed her of her jewellery, which was in a case, and money on the dresser. Slim stood guard at the door. Mary screamed for help. A male boarder named Stern appeared, held Slim from behind and disarmed him.

Sleight pointed his gun, fired at Stern and shot Stern in his right arm. Stern had to release Slim. Both intruders ran away.

Two days later, both Sleight and Slim were apprehended by the police and they were identified by Mary and Stern at an identification parade.

Draft the indictment to be presented in the Supreme/High Court. Give brief reasons for your draft.

QUESTION 2

- (a) Jah, a Rastafarian and a witness for the defence, refused to take the prescribed oath indicated by the clerk, and sought to recite his own words "I swear by Jah Rastafari..."

The trial judge refused to permit him to do so and his evidence was not taken. The accused was convicted and complained that the trial judge had denied him sufficient opportunity to put his case to the jury. He wishes to appeal.

Advise counsel for the defence whether or not he has any arguable grounds. Give reasons.

- (b) Artnell and Calcraft were charged with forgery and both were granted bail. Artnell did not attend court when the preliminary examination/committal proceedings commenced. Artnell was later arrested and brought before the Magistrate. The evidence of the witnesses, who had already given evidence, was read over by the Magistrate to Artnell. His counsel cross-examined the witnesses. Both accused were committed to stand trial at the Supreme/High Court and indicted for forgery.

Advise Artnell's attorney-at-law whether or not his committal and indictment were valid, giving reasons.

QUESTION 3

- (i) Irons 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 and the plea was entered. On hearing the relevant facts from the prosecutor, the trial judge vacated the plea and ordered that the trial continue.

The defendant was tried and acquitted of wounding with intent. The lesser offence was not left to the jury. The trial judge, on the basis of the earlier guilty plea to unlawful wounding, sentenced the defendant to three months imprisonment.

Irons wishes to appeal and seeks your advice. Advise him.

- (ii) Would your advice be different if the indictment had contained, as count two, the lesser offence of unlawful wounding, the defendant had pleaded guilty to that offence, the judge had ruled that the plea of guilty should stand and the defendant be tried on the more serious charge of wounding with intent, but was thereafter acquitted?

QUESTION 4

- (a) Phillip was indicted for the gruesome murder of his common-law wife. A female juror's name was called. She was challenged by Phillip's counsel as soon as she entered the jury box. This was his third peremptory challenge. Ten male jurors had already been empanelled. The trial judge asked counsel why he challenged her and counsel replied "... because she is a woman." The challenge was not permitted. The female juror was empanelled. The jury returned a verdict of guilty. Phillip is of the view that he was denied his right of challenge and wishes to appeal.

Advise him on his prospect of success.

- (b) Duke was indicted for rape of a prominent professional woman who had come to his office to interview him. At the time, the incident had been

reported in several newspapers in the town. At the trial, counsel for Duke sought an adjournment to be allowed to examine the list of jurors and their antecedents. This was refused by the trial judge. As each juror came into the box to be sworn, defence counsel attempted to question the juror as to his prior knowledge and views of the case. Again, he was not permitted to do so. Duke was convicted.

He claims that because of these rulings he was denied a fair trial and wishes to appeal. Advise his counsel on his prospect of success.

QUESTION 5

The appellant Shand, employed as a driver, was convicted of fraudulent conversion of a quantity of goods which he had been directed to deliver to a customer of his employer. He transported the goods to his private storeroom instead, assisted by one Ring, a handyman. Ring gave a cautioned statement to the police admitting his involvement and said that he innocently assisted Shand to unload the goods at the latter's home, thereby implicating Shand. The goods were found at the appellant's home.

The prosecution, at the joint trial of Ring and Shand, tendered Ring's statement into evidence, unedited. Counsel for the appellant Shand objected to its admission, claiming that his client's name should first be removed. The trial judge admitted the statement, unedited.

In his directions the trial judge warned the jury that the statement was not evidence against the appellant Shand. Both were convicted. Shand claims that he was prejudiced and his trial was unfair. He wishes to appeal.

Advise him on his chances of success.

QUESTION 6

Sam was indicted for murder. On his arraignment, the indictment was read to him inviting his plea. He remained silent. The trial judge ordered that a jury be empanelled to try the issue of whether he was mute of malice or by visitation of God.

- (i) Advise Sam whether or not the trial judge was correct to do so.
 - (ii) What is the applicable law and procedure if the jury finds that he was mute by visitation of God?
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QUESTION 7

A boy, 10 years old, is called as a witness for the prosecution at a trial charging the accused with the offence of rape. The clerk in the Supreme/High Court attempts to swear the witness. The presiding judge stops the clerk and proceeds to question the witness before he takes the oath.

Advise whether or not the judge was correct to adopt this approach and in the presence of the jury, and the law applicable to the determination of the issue.

QUESTION 8

On April 10, 2008, John was convicted of murder committed in September 2006. He had shot to death two men with whom he had a quarrel in a bar near his home.

After the verdict was pronounced, no *allocutus* was pronounced by the clerk.

Counsel for John then addressed the court to the effect that he wished an adjournment to call certain vital evidence prior to sentencing.

The trial judge refused his application and immediately sentenced John to “suffer death in the manner authorized by law”.

Counsel seeks your advice on:

- (i) the absence of the pronouncement of the *allocutus*;
- (ii) the validity of the trial judge’s action; and
- (iii) the possible grounds of appeal.

Advise him.
