

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2009

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 18, 2009)

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

John Crooks and James Steele entered the supermarket of Fair Trade Limited situated at Dime Street in the parish of Kingston on January 4, 2009 at 5:00 p.m. following a brisk day of sale.

The cashier Sadie Swift was at the register counting the day's cash sales. Both men pulled firearms, pointed them at her and ordered her to hand over the money. The other cashiers screamed, distracting both men. Sadie, scooped up the tray containing the cash and dashed towards the open storeroom door. Both men chased after her with the firearms in their hands. Sadie, running frantically to escape them, ran down a steep flight of stairs, fell unconscious and fractured her right arm. Both men retrieved the money and ran back through the supermarket.

John, proceeding a few feet in front of James, stopped and fondled the breasts of May Bright, a customer. James paused, looked on and said nothing. They both ran from the supermarket.

Both men were apprehended a month later.

Draft an indictment for trial in the High Court/Supreme Court. Give short reasons for your draft.

QUESTION 2

The appellant Peter Snort a well known singer/entertainer was convicted of possession of cocaine. A party of three policemen, Constables Amos, Bent and Cross had searched the room of a house Peter Snort occupied. Constable Amos found the cocaine, consisting of six packets, in a drawer of a dresser which contained several items of clothing claimed by the appellant as his.

At the trial, it was suggested to Constable Amos in cross-examination that the packets of cocaine were not found in the appellant's dresser drawer, but were taken from the adjoining room occupied by one Marcus, who was present witnessing the search. Constable Amos denied the suggestion.

The appellant gave evidence and called two witnesses, all of whom maintained the allegation that no cocaine was found in his possession but in the room adjoining. The defence did not call Marcus. The defence closed its case.

Despite the objection of the defence, the trial judge then called Marcus, who denied that the cocaine was found in his room. The judge, relying on the evidence of Marcus, convicted and sentenced the appellant.

- (i) The appellant seeks your advice on his chances of success, on appeal. Advise him.
- (ii) What would your advice be, if defence counsel had made no suggestion in cross-examination to Constable Amos that the drug was found in the adjoining room, but had so alleged in his opening address and called a witness to support that fact, after which the trial judge called Marcus.

Give reasons.

QUESTION 3

“At common law a man who has once been tried and acquitted for a crime may not be tried again for the same offence if he was ‘in jeopardy’ on the first trial ... He was so ‘in jeopardy’ if (1) the Court was competent to try him for the offence; (2) the trial was upon a good indictment, on which a valid judgment of conviction could be entered; and (3) the acquittal was on the merits, i.e. by verdict on the trial, or in summary cases by dismissal on the merits, followed by a judgment or order of acquittal.” Russell on Crimes Vol. ii., page 1982.

In light of the above what is your opinion, if it is claimed that the special plea in bar is open to the defendant, in the situations undermentioned:

- (i) The defendant, charged on an information/complaint with a summary offence, pleads not guilty on his first occasion in court and the matter is fixed for trial. On the trial date, no witnesses for the prosecution are in attendance, the Resident Magistrate/Magistrate refuses to grant an application for an adjournment by the prosecution and discharges the defendant. The Resident Magistrate/Magistrate endorses the information/complaint “Withdrawn”, and signs it.

The following week, within the limitation period, the prosecution issues a second information/complaint for the same offence against the defendant.

- (ii) The accused is charged with wounding with intent. On the trial date, the jury is empanelled, he is put in the charge of the jury but the court is told, erroneously, that the sole eye-witness is out of the jurisdiction and unlikely to return. The prosecutor advises the trial judge that he is unable to proceed any further with

the prosecution. The trial judge directs the jury to return a verdict of acquittal. The jury complies and the accused is discharged.

The following month, the witness is located in the jurisdiction and the prosecutor re-indicts the accused for the same offence.

Give the reasons for your opinion in each case.

QUESTION 4

- (a) Mark was charged summarily under section 2 of the Freshwater Fisheries Act for the offence of "... farming fish without an oxygen aerator in the tank for the purpose thereof." The section had been repealed prior to the charge and the Act itself had been re-enacted as the Fish Culture Act in identical terms. The particulars of the offence were properly described in the information/complaint.

After the close of the prosecution's case, counsel for Mark submitted that the magistrate should not call on his client, because the Act under which he was charged did not exist, having been repealed.

Advise the magistrate how to proceed, giving reasons for your advice.

- (b) John was charged summarily under the Road Traffic Act for "operating a motor car on the road with a defective tyre, namely, the left front tyre ...". The defendant John brought the offending tyre to court. The prosecuting police officer gave evidence that it was the "right front tyre" which was defective. On

the application of counsel for the prosecution the magistrate amended the information/complaint to read "right front tyre". John was convicted and fined.

John consults you, wishing to appeal, and maintains that the amendment created a wholly new offence.

Advise John of his chances of success giving reasons.

QUESTION 5

- (a) After completion of the summing up at the trial of Alex Rickman who was charged with the offence of rape, the trial judge told the jury that they could retire with the several exhibits. The jury retired. Both counsel, as well as the judge left the courtroom. One of the jurors returned to the courtroom, took the exhibits and returned with them to the jury room. He was not stopped, nor did anyone speak with him. The judge was told of the matter. He recalled the jury, enquired into the incident and allowed the jury to retire again.

Alex was convicted and complained of the judge's treatment of the juror's action.

Advise him of his chances of success on appeal giving reasons.

- (b) Rick Alexander was convicted of robbery with aggravation and wounding. He robbed a van driver and wounded him. The defence was an alibi. Rick and his witness gave evidence that he was in an adjoining town, at the time of the

offences. The jury retired to consider the verdict. They returned to the courtroom and the foreman advised the judge that they wished to know the distance from the place of the robbery to the town where Rick lived. The trial judge regarded this as a valid query and both counsel agreed. Counsel for the defence who was familiar with the entire area, advised the court in the jury's presence that the town where Rick lived was three (3) miles from the scene of the robbery. Rick was sentenced after conviction by the jury.

Advise Rick's counsel of the propriety of the trial judge's action and Rick's chances of success on appeal, giving reasons.

QUESTION 6

The jury retired to consider their verdict in a trial of Robert T for wounding with intent. The trial judge recalled the jury after a period of forty (40) minutes, and gave them directions on good character and further directions on identification. The jury retired for a second time. After twenty (20) minutes the jury returned, and by a majority found Robert T guilty. He was sentenced. Robert T consults you for advice on the validity of his conviction.

Advise him, giving reasons.

QUESTION 7

Mort Caine was charged on an indictment for murder. Mr Swift, an eye-witness, had given a statement to the police. His name and that of other witnesses were placed on the back of the indictment for trial at the Circuit Court/High Court. Mr Swift gave a second statement to the police, subsequently, varying somewhat from his earlier statement. Thereafter, the prosecutor advised the police to take a statement from Mrs Swift, who was also an eyewitness. The prosecutor advised counsel for the accused that the Crown did not intend to call Mr Swift, but omitted to mention his second statement. At the trial, before the arraignment, counsel for the accused insisted that the prosecutor call Mr Swift.

You are the prosecutor. State what procedure you will adopt in order to –

- (i) use Mrs Swift as a witness at the trial; and
- (ii) deal with the second statement of Mr Swift.
- (iii) What is your obligation in respect of the decision not to call Mr Swift as a witness?

Give reasons for your answers.

QUESTION 8

The appellants Boxer and Parry were charged with the murder of Fray. The prosecution's case was that the appellants, armed with knives, together attacked and

stabbed Fray, who succumbed to his wounds. The evidence of the prosecution related an incident twenty (20) minutes before in which the appellants had had a fist fight with Fray who seemed to have triumphed. At the trial the defence was self defence. In the summing up the trial judge told the jury that he was withdrawing the issue of manslaughter from them on the prosecution's case maintaining that the interval of twenty (20) minutes between the two incidents was sufficient cooling-off time for the appellants to have regained their self control. However, he did leave the issue of provocation as arising on the defence's case.

The jury retired and returned after thirty (30) minutes with a unanimous verdict of not guilty of murder but guilty of manslaughter in respect of both appellants. The trial judge refused to accept the verdicts. He stated the verdicts were ambiguous and inconsistent with the evidence, that manslaughter did not arise on the prosecution's case and though it did on the case for the defence, he could not accept their verdict. He gave them further directions and asked the jury to reconsider their verdicts. They retired for the second time.

The jury returned after twenty (20) minutes with a unanimous verdict of guilty of murder against both appellants.

Advise the appellants, giving your reasons, whether or not the trial judge was correct in what he did and their chances of success on appeal.
