

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2011**

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 16, 2011)

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.

THE FOLLOWING FACTS – “THE CASE OF THE SCARLET PIMPERNELLI” – RELATE TO QUESTIONS 1, 2, 3 AND 4. IN ANSWERING QUESTIONS 1, 2, 3 AND 4 APPLY THESE FACTS TOGETHER WITH ANY ADDITIONAL FACTS GIVEN FOR THAT QUESTION. DO NOT TRANSFER ADDITIONAL FACTS FROM ONE QUESTION TO ANOTHER.

THE CASE OF THE SCARLET PIMPERNELLI

Scarlet Pimperelli was the greatest shoplifter in the jurisdiction. In the last five years she, on 12 occasions, stole expensive perfumes, bathing suits, jewellery and designer handbags from different stores in the country. Her daring heists of expensive items, and the fact that she had not been captured, had contributed to her notoriety. The tabloids published many stories on Scarlet calling her “The Five-Finger Phantom” and attributing many thefts to her, including some in which she was uninvolved.

In April of this year “Stacey’s”, the famous American department store, opened a store in the capital and Scarlet decided to resume her shoplifting career. Scarlet’s roommate, Lesley Howard, worked at “Stacey’s” Ladies Wear department. On April 15, 2009, Scarlet visited the store and stole items from the Jewellery, Lingerie and Perfumery departments. Each department was on a separate floor and each had its own cash registers. Prominent signage instructed customers to check out all their purchases at the registers for the departments where they had been displayed for sale.

The thefts were first achieved by Scarlet hiding the items on her person and in her clothing whilst in the fitting rooms. Scarlet was further facilitated in the Ladies Wear department by Lesley’s deliberate inattention to Scarlet in the dressing room whilst the latter hid the stolen items in the hem of a dressing gown that she purchased shortly thereafter.

Unbeknownst to Scarlet, Lesley, and other customers and employees, the police, with the concurrence of the proprietors, placed cameras in the dressing rooms to aid in detecting shoplifters.

On leaving the store Scarlet was arrested and, according to the police report, she had stolen a nightgown valued at Five Thousand Dollars (\$5,000.00), an ankle chain valued at Fifteen Thousand Dollars (\$15,000.00) and a “Bulgari” perfume valued at Thirty Thousand Dollars (\$30,000.00).

After reviewing Lesley’s conduct on the videotape the police conducted further inquiries and arrested her. On arrest Lesley, confused by rapid questioning, confessed that she organized the whole thing.

After the arrest the tabloids published a story on the front page headlined “Final Felony of the Five-Finger Phantom” and reporting that she was “finally captured after years of larceny”.

QUESTION 1

(ANSWER ALL PARTS)

- (a) Draft the indictment.

- (b) During the presentation of the Prosecution’s case it is revealed that the police had erred in the description of the items found with Scarlet. The nightgown was in fact a girdle, the anklet a bracelet and the perfume a cologne.

The prosecution asked the judge to amend the indictment to correct the description of the stolen items. The defence objected saying that nothing was

wrong with the indictment and that his client should be acquitted if the case is not made out: “If the description doesn’t fit you must acquit”. The judge rules that the indictment be amended as sought by the prosecution.

- (i) Formalise the judge’s order.
 - (ii) Comment on the judge’s order having particular regard to the defence’s objection.
-

QUESTION 2

(ANSWER BOTH PARTS)

- (a) At the trial Scarlet’s counsel sought permission to question the potential jurors as to whether they had read the “Five-Finger Phantom” articles in the tabloids. The judge refused this application. Scarlet is convicted. Advise, with the aid of decided cases, whether the judge’s refusal may be a viable ground of appeal.
 - (b) You are junior counsel. Lesley instructs your leader that she desires to plead guilty but that, despite her statement under caution, she did not organise the theft. She further would like some indication of the likely sentence. You are asked to prepare an opinion advising on the course(s) that might be taken. Prepare the opinion.
-

QUESTION 3

The tapes from the dressing room were not disclosed to the defence. The case against Lesley was being presented on the allegations that she was in the dressing room with Scarlet, that she had confessed to the police and that she was Scarlet's roommate.

The defence countered by asserting that Lesley's confession was produced by oppression and that, at all material times, she acted professionally at the store.

The police and "Stacey's" do not want the tapes revealed as they fear that it will alert future thieves and discourage lawful shoppers.

The prosecution team has seen the tapes and the majority of the team, despite explanations from the "Stacey's" team, sees little on them to condemn Lesley's actions.

You are part of the prosecution team and the senior prosecutor asks for your opinion as to what should be done with the tapes and how ultimately the issue of the disclosure of the tapes is likely to be determined.

Prepare the opinion.

QUESTION 4

Scarlet is being tried in the Circuit Court/Assizes. On the day set down for closing speeches Scarlet did not attend. The trial judge adjourned the case to the next day to get further information on her whereabouts. When the trial resumed Scarlet was still

not found. Her counsel, Rhett Butler, sought to make a closing speech on her behalf but the judge refused to permit him. Scarlet was convicted.

Rhett seeks your advice as to whether the judge was correct in refusing to allow him to make a closing speech and whether he can file an appeal on behalf of Scarlet who has still not been found.

Advise Rhett.

THE FOLLOWING FACTS OF “THE RAID ON RASTA MOUNTAIN” RELATE TO QUESTIONS 5, 6 AND 7. IN ANSWERING QUESTIONS 5, 6 AND 7 APPLY THESE FACTS TOGETHER WITH ANY ADDITIONAL FACTS GIVEN FOR THAT QUESTION. DO NOT TRANSFER ADDITIONAL FACTS FROM ONE QUESTION TO ANOTHER.

THE RAID ON RASTA MOUNTAIN

On the evening of January 15 this year, Constable Wayne Johns conducted surveillance on a group of Rastafarians smoking cannabis, chanting and beating drums. Through his binoculars, and despite the smoky night, he believes he made out Ras Fenny and Ras Rearon both of whom he had met once before.

To effect the arrest Johns called for assistance but the blaring sirens alerted the Rastafarians and they dispersed. Johns recovered the cannabis “spliff” that the man he believed to be Fenny had been smoking and took it to the Island Chemist who, eventually, issued a certificate.

Fenny and Rearon were summoned and their separate trials commenced at the magistrate's court.

After the Crown's case was closed and Fenny gave evidence it was discovered that both the summons and the information/complaint were unsigned. It was also discovered that the Chemist's certificate pertained to a wholly different case.

QUESTION 5

The prosecution applies to re-open their case to tender the appropriate certificate. They also submit that the absence of the signatures is immaterial.

The magistrate asks you to draft a ruling that considers the relevant cases and statutory provisions.

Prepare the draft ruling.

QUESTION 6

Fenny's evidence was that he was indeed smoking cannabis but that, as it was part of a religious rite, a conviction would breach his freedom of religion.

The magistrate convicted Fenny but merely stated:

“This is a clear case. Although the Crown did not scientifically prove that the item was cannabis the defendant admitted that it was. I find him guilty as charged.”

There was no reference to the defence, nor was any warning given on visual identification evidence.

Comment critically on the magistrate’s finding.

QUESTION 7

Rearon was convicted and through his counsel, Mason James, gave verbal notice of appeal.

James, awaiting his trial fees and appeal retainer, took no further steps. You have been retained five weeks after the conviction and Rearon seeks your advice as to:

- (i) What can be done to put his matter before the appellate court?
 - (ii) Whether, and if so how, the appellate court may become aware that on the evening of January 15 the Custody Record of the main downtown police station recorded that Rearon was in police custody.
-

QUESTION 8

Betty Taylor attends your chambers and explains that her twenty-year old son Richard Fisher was taken into custody by the police a week earlier and has not been taken before a court. Betty pleads with you to secure his release.

Explain the steps you will take to secure his release, including reference to the legal basis, procedure and required proof.
