

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2013

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 13, 2013)

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 black or dark blue ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Assume that your jurisdiction has a *Legal Profession Act* that provides:

“8. If a person who is not enrolled practises as a lawyer he shall be liable on summary conviction to a fine of five hundred thousand dollars in respect of a first offence and for a second or any subsequent offence to a fine of one million dollars or to imprisonment for one year or to both such fine and imprisonment.”

Tommy and Victor Aird are brothers who in January of last year opened a legal practice in the capital. They publicly claimed to be experts in personal injury matters and enjoyed a thriving practice where they represented hundreds of clients. They were not enrolled and have no legal qualification.

On February 1 of this year Tommy attended the Bar Association’s weekend seminar and, whilst engaged in a convivial conversation, was unable to recall the year of his enrolment. This piqued the curiosity of Patrick Cushing, a leading member of the bar, who advised the police. Within a day the police discovered that the Airds are not enrolled.

By pure happenstance, Hilde Django attended the station that very day and reported that on February 5 last year the Aird brothers had received a cheque in the sum of six million dollars on her behalf but had not yet paid over the proceeds. The sum was the insurance company’s payment to compensate her for injuries that she had suffered in a motor vehicle accident. The Airds’ fees were to have been on a one-third contingency basis.

Mrs. Django further reported that, on April 1 last year, she threatened Victor Aird that she was going to the police but she changed her mind as Victor reminded her that he knew where she resided.

Police investigations uncovered that the cheque had been promptly negotiated but the Airds' personal and clients' accounts had in aggregate only two hundred thousand dollars.

On February 5 of this year the police arrested the Aird brothers for breaching the *Legal Profession Act*, as well as for Mrs. Django's complaints.

The arrests excited wide coverage and a crowd made up of the Airds' clients attended the Bar Association office and protested the fact that the association did not protect them from being duped. Paul Starkey and Joan Osgood are part of this group.

Starkey gave a statement to the police that, on March 1 last year, he paid Tommy Aird a retainer of five hundred thousand dollars to represent him in a yet to be completed criminal case.

You are a Crown Counsel and the Director of Public Prosecutions/Attorney General asks you to:

- i) draft an indictment (or indictments) "that adequately covers the full criminality";  
and
- ii) give brief reasons for the counts you have selected.

## **QUESTION 2**

David Edgewild was convicted for the offence of rape and sentenced to fifteen years imprisonment. At the trial he had been represented by Marco Vanns, a very experienced criminal advocate, but the family has approached you in the hope that you will conduct his appeal.

On examination of the trial transcript you discover that on arraignment Edgewild first answered: "Rape who?" When, on the judge's instructions, the charge was repeated, Edgewild had responded with a slew of invectives and expletives. The judge ordered Edgewild to be silent and directed that a plea of not guilty be entered.

The trial proceeded but Edgewild did not testify on his own behalf.

You attend on Edgewild at the prison and encounter great difficulty in conversing with him due to his inability to understand the issues unless they are significantly simplified and often repeated. Edgewild's family physician advises that he suffers from developmental problems, is highly suggestible, and has a mental age of ten (10) years.

Vanns confirms that these matters were not raised at trial but explains that he had noticed Edgewild's suggestibility and that was the reason he did not call Edgewild as a witness.

- i) Was the judge correct in having a plea of not guilty entered?
- ii) Discuss whether or not the Court of Appeal is likely to reverse the conviction because of Edgewild's mental incapacity.

### **QUESTION 3**

A United States registered aircraft landed at your international airport with twelve (12) passengers and two (2) crew members on a chartered flight from a neighbouring country. Amongst the luggage was a suitcase containing parcels with a substance that a field test indicated was cocaine. Customs officials advised Woman Corporal Poetic Justice and Constable Fourpac Chakur, and they speedily made their way to the Customs Hall.

Woman Corporal Justice called Inspector Renee Williamson, the police force's legal counsel, and Williamson advised Justice that if she suspected that someone in the group imported the drug she could arrest them all. The police officers accordingly advised the passengers and crew that they suspected that "one or more" of them had imported cocaine and they would all be placed under arrest for further investigations to be conducted.

After three (3) days the passengers and crew remain in custody without being charged. The family of Jock Jermaine, one of the passengers, attends your chambers and asks that you intervene.

- i) Was Inspector Renee Williamson's advice correct?
- ii) Outline the steps you will take to secure Jermaine's release. Explain the legal bases for these steps.

#### **QUESTION 4**

##### **Section 6 of the *Obscene Art Act* provides that:**

“Any person who provides, gives or offers for sale any obscene figure, drawing or painting to any person under the age of seventeen (17) years shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.”

The “Bohemia Group” is a collective of artists who have consistently opposed the Act describing it as unwarranted censorship.

On a police operation Ellie Clift and Jerry Buchanan, members of the Bohemia Group, were arrested and charged on separate informations/complaints for contravening section 6 as follows:

*“Ellie Clift on the 4<sup>th</sup> day of July 2011 provided or gave an obscene figure namely a sculpture known as “Envy” to Maggie Fairchild a person under the age of seventeen years.”*

.....

*“Jerry Buchanan on the 4<sup>th</sup> day of July 2011 gave or offered for sale an obscene figure namely a painting known as “Hottentut Revisited” to Maggie Fairchild a person under the age of seventeen years.”*

Clift and Buchanan are separately represented. Buchanan's counsel requested separate trials as, of the two works of art, "Hottentut Revisited" had the more realistic depiction of human genitalia, but Magistrate McCleary refused. Both pleaded not guilty and the matter was set for trial a week later.

On the trial day Magistrate McLeary was ill and Magistrate Shelton presided. Magistrate Shelton did not cause Buchanan and Clift to be arraigned again.

Maggie Fairchild was the first prosecution witness. After her evidence counsel for both defendants submitted that the trial was a nullity for three reasons. They argued first that the informations/complaints were duplicitous, secondly, that their clients had not been arraigned in the presence of Magistrate Shelton, and, thirdly, that they had not consented to the joinder.

You appear for the prosecution and are required to answer these objections. Please do so.

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### **QUESTION 5**

Stephan Pushman was charged for a drug trafficking offence triable in the Resident Magistrate's/Magistrate's Court. After the first witness gave evidence, Pushman's counsel asked the prosecutor whether any covert intelligence source or device was employed to gather evidence.

The prosecutor refused to answer and asked the Resident Magistrate/Magistrate to hear from the prosecution ex parte in chambers on the issue. The Resident Magistrate/Magistrate refused and directed the prosecution to answer fulsomely. The prosecutor pleaded for reconsideration, pointing out that the answer would concern issues of national security. The Resident Magistrate/Magistrate was unmoved. The prosecutor asked for an adjournment to “prepare a full answer” and an hour-long recess was permitted.

On return to court the prosecutor entered a *nolle prosequi* and Pushman was told that he was free to go.

Whilst Pushman was in the courtyard thanking his family and his creator for his “freedom”, Inspector Brown arrested and charged him for the same drug trafficking offence. Later that day Pushman was brought before a different Resident Magistrate/Magistrate and granted bail.

- i) Explain what application(s) Pushman’s counsel should now make?
  
- ii) Critically comment on the Resident Magistrate’s/Magistrate’s treatment of the issues surrounding defence counsel’s request for disclosure.

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## **QUESTION 6**

The jury had been retired for two and a half (2 ½) hours at Barry Farquharson’s trial when they returned to the jury box without having been sent for by the judge. Before they had retired the



judge had instructed them to “try if they could” to arrive at a unanimous verdict, but no majority direction was given.

On their return the following transpired:

*Judge: Why have you returned?*

*Foreman: We have arrived at a verdict.*

*Judge: Okay please sit, Mr. Registrar over to you.*

*Registrar: Mr. Foreman please stand. Mr. Foreman and members of the jury have you arrived at a verdict.*

*Foreman: Yes, only one of us saying guilty and it don't look like...*

*Judge: No, no, no you must just answer yes or no! In any event I have not directed you to bring in any majority verdict. You must all agree if you can. Go back and deliberate some more and return at any time when you have arrived at a unanimous verdict.*

Half an hour later the jury returned with a unanimous verdict of guilt.

After a week a juror wrote to the Registrar explaining that the single juror who had initially voted guilty had convinced the rest of them that the judge was obviously agreeing with him and that they were looking rather foolish. This juror had also pointed out the nation's high crime rate.

The Registrar copied the letter to Farquharson's counsel and to the prosecution.

Farquharson's counsel submits as grounds of appeal that the judge was wrong not to have accepted the initial verdict of not guilty, and that the jury had misconducted itself by taking irrelevant considerations into account during their deliberation.

You are asked to prepare the prosecution's skeleton arguments in response. Please do so.

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### **QUESTION 7**

Mark Swift was convicted by a jury for robbery from an appliance store in the capital. Swift had been jointly indicted with John Myrie but Myrie changed his plea to guilty just before the close of the Crown's case. Swift's counsel requested, in the jury's absence, that the jury be discharged because of the "obvious prejudice to Swift by his co-defendant's change of plea". This was refused.

Eye-witness evidence against Swift and Myrie came primarily from the store clerk, who claimed to have known them before.

Swift's counsel suggested in his cross-examination of the investigating police officer, Corporal Brown, that Swift had told Corporal Brown that he had been at a particular police station 30 miles away at the relevant time. Corporal Brown denied that he was told this.

Swift gave evidence of his presence at the police station at the relevant time and additionally described an incident with a policeman, Sergeant Francis, in the Guard Room there.

After the close of the case for the defence, the prosecution was allowed by the trial judge to call Sergeant Francis to give evidence in rebuttal. The latter denied seeing Swift at the said police station and tendered a video tape of the station's Guard Room for the entire day. Swift's image was not seen. The defence was permitted a two (2) day adjournment to prepare its cross-examination but, on the resumption, did not challenge Francis' evidence.

Swift was convicted and sentenced.

Swift wishes to appeal.

- i) Draft grounds of appeal.
- ii) Advise his attorney-at-law of his chances of success.

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### **QUESTION 8**

You are sharing chambers with Sigismund Koop. Koop rarely does criminal trials and seeks your advice on a matter he is currently trying in the Magistrate's/Resident Magistrate's Court.

Koop explains that his client, Caiphas Cush, is charged with stealing Bev Brown's mobile telephone. The only evidence linking Caiphas to the theft is a confession he allegedly gave to the police.

Cush testified on the *voire dire* that the police had procured the confession by preventing him from retaining counsel and confusing him with quick questioning. The police denied these assertions.

At the end of the *voire dire* the Magistrate/Resident Magistrate ruled that the confession was admissible but gave no reasons. The Magistrate/Resident Magistrate further refused Koop's request for written reasons saying: "The law only requires me to give reasons for finding guilt or innocence."

The case is due to be completed tomorrow and Koop fears that his client will be convicted and sent to prison. Your advice is sought as to:

- i) How to commence and further prosecute an appeal should his client be convicted.
- ii) How to secure his client's release on bail pending appeal.
- iii) Whether the Magistrate's/Resident Magistrate's failure to give reasons for her decision on the *voire dire* is likely to be a sufficient ground to reverse a conviction.

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**END OF PAPER**