

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2015

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 11, 2015)

Instructions to Students

- (a) Time: **3½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

- (a) You have recently been employed as a judicial clerk to the Court of Appeal for your jurisdiction. On your first day you were handed the file of R v Baxton Bonkers by the judge to whom you will report. From the file you have been able to see that Baxton Bonkers was sentenced to 20 years imprisonment at hard labour after he pleaded guilty to the offence of manslaughter in the Supreme/High Court of Paradisia.

Counsel for the accused had filed and argued three grounds of appeal. The first ground complained that the sentencing judge accepted the prosecution version of the allegations rather than the defence version. The defence version was significantly more favourable to the accused than the one accepted. The second ground complained that the trial judge ought to have ordered an official psychiatric assessment of the accused since there were clear signs that the issue of the general mental state of the accused was relevant. The third ground complained that the sentence of 20 years was manifestly excessive since the issues of provocation and diminished responsibility arose. The appeal court reserved its decision.

You have been asked to prepare an opinion as to the powers of the court in relation to the grounds filed and argued.

Prepare the opinion.

- (b) Explain the phrase “fresh/further evidence on appeal” and discuss the principles which a court of appeal will consider in dealing with applications for “fresh/further evidence”.

QUESTION 2

- (a) Servicus Bonkers has been charged with arson and is going to court this morning for the first time. His family retains your firm to represent him.

It is almost time for court and you and your senior rush over just in time to hear the registrar of the court pleading Servicus to the charge of arson.

Servicus ignores the question and instead says to the judge -

“Hey you there in the pretty pretty dress you are not obliged to say anything but anything you say may be taken down and served in evidence at your trials in life.”

After a brief moment of consternation, the judge asks if he is represented. Your senior announces that both of you appear but explains to the judge that the defence has not had an opportunity to interview him. The judge sets another date and instructs the prosecution to arrange for a psychiatric report as to whether he is fit to plead.

Provide your senior with an opinion as to the law and processes surrounding fitness to plead.

- (b) When Servicus Bonkers returned to court and was pleaded, he refused to speak. The psychiatric report concluded that he was fit to plead. In addition, you have indicated to the court that even though he seemed to understand what was being said when you interviewed him, you were unable to get him to utter a word of instructions to you.
- (i) Using the appropriate authorities explain the nature of the procedure that the judge should adopt now?

- (ii) What practical steps should you take to assist the court and your client when the procedure has been adopted?
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QUESTION 3

- (a) You represent John Furnace who has been charged with rape in the criminal court of your jurisdiction. The matter had been set for trial on several occasions but was never able to get off the ground. On each of those occasions John, who was on bail, was present.

On the next occasion he was absent. The matter was adjourned for two days to enable you to get in touch with him. All your efforts were fruitless.

When the matter came up for trial after the adjournment, the trial judge decided to proceed with the trial and demanded that you conduct the trial in the absence of your client.

With reference to the relevant legal authorities discuss the correctness of the judge's decisions.

- (b) During the course of a trial for murder in which you were a junior counsel, information has come to you that data from a telephone service provider which is critical to your case, was in the possession of the prosecution and not provided to you. The information may show that a telephone call which the main crown witness claims was made to him by the deceased was in fact never made. The main prosecution witness is alleging that the deceased called him and told him that the accused was about to shoot him and he was asking for help.

When it was brought to the court's attention the prosecutor claimed that the information was not disclosed because the provider of the information did not want subscribers to believe that they were working with the police, and that it was in the public interest that the mechanism of tracing calls not be made public.

The trial judge was fairly new, and in the time honoured fashion of seeking advice from counsel asked your team to make submissions to him on the law that could guide his decision in this regard.

You have been asked to make those submissions.

QUESTION 4

- (a) At a trial for murder the jury returned after three hours and the foreman indicated to the judge that they had failed to arrive at a verdict. The trial judge, after considering what the foreman had said, directed them as follows:

" We seek either unanimity or a majority verdict here and that is really the strength of the jury system, if we can get twelve people to listen to the evidence and talk to each other after listening to the same evidence then you must be able to reach a verdict. This is not rocket science, it does not need a nuclear scientist to understand this evidence. If you are unable to understand this evidence then obviously you don't even understand yourselves. We cannot have a jury system where there are simple issues and you cannot make up your mind. You can make up your mind what to eat, can't you? Why don't you make up your mind here? Please go and come back with a decision, for heaven's sake!"

Counsel for the prosecution interrupted the judge and pointed out that the accused has not yet been brought into court. The judge ignored counsel and instructed the jury further:

“Retire again and follow my instructions”.

The jury retired again and returned in 5 minutes with a verdict of guilty.

You represent the accused. Giving reasons, advise your client whether the verdict is sustainable.

- (b) Some three hours after the verdict was given and the jury discharged, the trial judge called you back into court. When you came in you saw 7 of the 12 jurors sitting in the jury box. The foreman was missing. The judge informed you that these 7 jurors have reported that the foreman had made an error and they actually intended to say “not guilty” and that what the foreman announced was not what they had all agreed to in the jury room.

Your client is elated. Is he justified in law? Explain.

QUESTION 5

You are junior counsel for the defence in a trial for human trafficking held before a jury. The prosecution called a series of witnesses to give evidence but none of them were the alleged victims of the trafficking. The women, whom it was alleged were trafficked, were all from Russia. They refused to give evidence, claiming that they were in the jurisdiction of their own free will. Only staff from the immigration department gave evidence. They stated that there was no record of these women entering the jurisdiction legally. The women had been working as exotic dancers.

At the end of the prosecution’s case your senior counsel indicated to the judge that the defence wanted to make a no-case submission. The judge turned to her and said, *“Are you really serious counsel? Is it not obvious to you that this is a case of circumstantial evidence?”*

Your senior, apparently taken off-guard, said to the judge, *“My junior here will submit to you on the issue of no case including the law on circumstantial evidence’*. The judge laughed and said *“Well well I have to hear this, members of the jury just sit there for a few minutes for me while I listen to this “*

- (i) Is there any procedural objection that arises? Explain.
- (ii) Outline your no-case submission.

QUESTION 6

Weedsmuir Hashish was arrested and charged for a series of drug offences before the court. The matter had come before the court on 15 occasions before and on those dates none of the witnesses turned up. During that time the justice ministry had issued a direction that all cases that did not seem to be able to get off the ground should be considered for dismissal so as to clear the backlog of cases.

On the next occasion before the court, the magistrate, hearing that no witnesses were present, dismissed the case without taking evidence or a plea.

Six years later, Weedsmuir, who had converted to Christianity and was a well known and respected deacon in a church, was surprised to find that he was re-arrested on the same charges one evening after church.

You represent Weedsmuir and are asked to advise on the issues which arise.

Advise him.

QUESTION 7

- (a) Constable Chelsea-Ann Nimble was charged on an indictment with the offence of larceny/theft of an Ipad.

The allegations were that, during an operation at a home that was on fire, she took an Ipad belonging to one of the residents. No one saw her take it. However when asked later by a fellow officer if she saw an Ipad, she said, "no." The Ipad was later found in her bag. In her defence she maintained that when she was asked about the Ipad she thought they were referring to an Ipod and that is why she said no. She said further that she did not know what an Ipad was. She took up the instrument that they call an Ipad in the rush and in error and had forgotten that she had it.

The judge found her guilty of larceny/theft of the Ipad. Just before sentencing, the prosecutor stood and asked for an amendment to the indictment which actually charged her with stealing an Ipod and not an Ipad. The amendment was granted despite the objection by her attorney.

Her attorney has asked you to advise him whether the judge was entitled in law to allow the change in the indictment at that late stage. Advise him.

- (b) Andre Wilson, Simart Smith and Raymond Rey were jointly indicted for larceny/theft of the following items: three watches, four bottles of African Bees men's cologne, two pairs of "Roach Killer" long pointed toe shoes. Andre Wilson was arrested by the security at the front of the store at around 10:30 a.m. Simart Smith was arrested upstairs in the store, where he was hiding, at around 11:45 a.m. Raymond Rey was arrested at the back of the store at approximately 12 noon as a result of a fight with the store clerk. He was searched and the African Bees cologne found in his socks and pockets.

There was no evidence that these men knew each other before.

Your senior asks your advice as to whether it is correct in law for them to be jointly indicted.

Advise him.

QUESTION 8

Kristina Makeny has been arrested and charged for three offences; larceny/theft of jewellery, larceny/theft of 50 bags of exquisite number 39 Peruvian Hair and receiving/handling stolen goods being 20 cartons of Basic White hair crème knowing them to have been stolen. She pleaded not guilty to the offences of larceny/theft of the jewellery and bags of hair but, guilty to the offence of receiving/handling the cartons of hair crème knowing them to have been stolen.

The trial judge rejected the plea of guilty to receiving/handling and proceeded with the trial of the offences of larceny/theft. The evidence is very weak and the judge was forced to find Kristina not guilty on both counts of larceny/theft.

The trial judge then proceeded to accept her initial guilty plea and sentenced Kristina for the offence of receiving/handling stolen goods.

- (i) Kristina insists that the judge was wrong to accept the plea after rejecting and to sentence her as she did and seeks your advice.

Advise her.

- (ii) How would your advice differ if Kristina was charged with larceny/theft of the hair crème instead, and the trial judge –
 - (a) found her not guilty of the larceny/theft of the hair crème ; and

(b) found her guilty of the lesser offence of receiving/handling the cartons of hair crème knowing them to be stolen.

END OF PAPER

