

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2018**

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 07, 2018)

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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

A police constable stationed at the university campus observed Mancini break into a parked motorcar and remove a cell phone. The constable continued to observe Mancini as she looked around and walked quickly away from the car.

The constable approached Mancini from behind and held on to her upper arm. Instinctively, Mancini bent her head and bit hard on the hand that held her. In response, the constable pushed Mancini who fell to the ground. He looked at his hand and saw that it was bleeding. The constable handcuffed Mancini and took her to the campus police station, which was five minutes walking distance away.

At the station, two female officers searched Mancini, removing her brassiere in the process. The officers also removed a cell phone and a bunch of keys, which included a car key.

Mancini was charged with malicious destruction of property, theft/larceny of a cell phone and resisting arrest. Upon caution, she explained to the officers that the car belonged to her and that her car papers and picture ID were in the glove compartment of the car. She further explained that she had locked her cell phone and car key in the car and decided to break the window to get in because she had an urgent appointment.

Mancini was put on a bench at the station for more than two hours to allow the police to 'check' her story. The officers confirmed that the car belonged to Mancini and decided to drop the charges of malicious destruction of property and theft/larceny, but are proceeding with the charge of resisting arrest.

Mancini has retained the firm, where you are a summer intern, to defend her.

In her instructions, she explained that she had bitten the constable's hand as she thought she was under attack. The senior attorney-at-law with conduct of the matter has given the file to you and asked for a legal opinion on whether:

- (i) the arrest was lawful;
- (ii) the search of Mancini was lawful; and

- (iii) the charge of resisting arrest can stand.

Prepare the opinion.

QUESTION 2

Elli Gee wishes to appeal his conviction for rape. Your senior, Elli Gee's attorney-at-law, has requested advice on the correctness of the judge's decisions in three instances during the trial.

- (a) Elli Gee pleaded not guilty to the charge for rape.

At the end of the Crown's case, after hearing the evidence given by the victim and the doctor, Elli Gee decided to change his plea to "not guilty of rape but guilty of indecent assault".

The young victim, who was six years old at the time of the incident, and nine years old at the time of trial, gave evidence that Elli Gee had put his penis inside her vagina. However, when she was asked questions in order to establish her ability to identify a penis, she seemed unsure in her answers. Furthermore, the doctor's evidence was not definitive as to whether there was any penile penetration.

The Crown was prepared to accept the plea but wished to have the opinion of the judge.

The judge was of the firm view that the trial should proceed and that it was for the jury to decide. The trial therefore continued. In his direction to the jury, the judge left both verdicts open to them.

- (b) After three hours of deliberation, the jury returned undecided. The judge began to discharge them. He began, "*Well jurors I am discharging you because....*" Before he was finished speaking, the foreman interrupted him. She explained that the jurors were requesting another opportunity to try to agree. The members of the jury had

not yet dispersed. They nodded their heads in agreement. The judge hesitated for a moment, then agreed and granted the request.

- (c) The members of the jury returned to the jury room. Twenty minutes later, they returned to the courtroom. The following exchange took place between the Registrar and the Foreman:

R: "Madam Foreman please stand."

R: "Madam Foreman and members of the jury, have you arrived at a verdict?"

MF: "Yes, we have."

R: "Is your verdict unanimous?"

MF: "Yes."

R: "How say you, do you find the accused guilty or not guilty of rape?"

MF: "Not Guilty."

R: "Madam Foreman and members of the jury, you say the accused is not guilty of rape?"

MF: "Oh no sorry, we say he is guilty of rape, but not guilty of indecent assault."

R: "That is your verdict, and so say all of you?"

MF: "Yes". The other jurors nodded in unison.

Elli Gee was sentenced to 15 years in prison.

Advise your senior as requested.

QUESTION 3

Willy Schmidt and Helmut Brandt, both police officers, were charged with murder and attempting to pervert the course of justice.

The Crown's case is that in 2014 Brandt chased the victim, Adpo Ham, through a park and shot him with his police-issued firearm. Schmidt and Brandt were both at the scene. They stated that the victim attacked Schmidt who shot him in self-defence.

Initially, no charges were brought against either of the men. Subsequently, a video recording of the incident was obtained from the surveillance system of a shop in the vicinity of the park, which led to them being charged. The video proved their statements to be false. Schmidt could be seen on the video chasing the deceased, while Brandt shouted in their direction.

Brandt's attorney-at-law approached the Crown to explain that Brandt wanted to plead guilty to attempting to pervert the course of justice. He was also willing to give evidence against Schmidt for the murder. In exchange for his evidence, the Crown promised not to prosecute Brandt for the murder. Brandt gave a detailed statement explaining how and why Schmidt murdered Ham, but did not himself admit any part of it.

In the Magistrate's/ Parish Judge's Court, Brandt pleaded guilty to attempting to pervert the course of justice and was sentenced. The DPP/AG entered a *nolle prosequi* in relation to the murder charge against Brandt. At the trial of Schmidt for murder, Brandt gave evidence for the Crown, as agreed.

Schmidt gave evidence in his defence. In his evidence he named Brandt as the mastermind behind the murder, said that it was Brandt who had planned it and had given Schmidt instructions to carry it out. Schmidt made reference to Whatsapp messages between himself and Brandt evidencing the plan. He said further that Brandt had sent him a list of names of persons to be executed and Ham's name was fourth on the list.

The findings of subsequent investigations support the evidence of Schmidt, and based on these findings, the DPP/AG brought a new charge of murder against Brandt for the death of Ham.

Brandt's attorney-at-law would like to know if the Crown can now properly prosecute him for the murder of Ham.

Advise him.

QUESTION 4

Harold Windisch and Stephan Windisch are twin brothers. They are before the High/Supreme Court on an indictment containing three counts. Harold is accused of setting a timing device to begin a fire, which burnt down his house, 'Tia Maria'.

A year earlier, he had insured 'Tia Maria' for US\$350,000 with Gatt Insurers. After the fire, he made a claim on the insurance policy.

Stephan, on the other hand, is accused of setting fire to the house of his neighbours with whom he has had a long-standing dispute.

In both instances petrol was used as the accelerant. The Crown further accused the brothers of buying the accelerant and timing device at the same hardware store. The houses are one mile apart from each other. The fires had been set 15 minutes apart. Both men deny the charges.

The first count charges Harold with the offence of arson. The particulars read:

"Harold Windisch on the 10th day of January 2017, in the district/parish of Angel maliciously set fire to a dwelling house the property of Harold Windisch with intent to defraud."

The second count charges Stephan with the offence of arson. The particulars read:

"Stephan Windisch on the 10th day of January 2017, in the district/parish of Angel set fire to a dwelling house, the property of DE, with intent to defraud or injure."

The third count charges Harold with the offence of attempting to obtain property by deception. The particulars read:

"Harold Windisch on the 1st day of February 2017, attempted to obtain money from Gatt Insurers."

On the first day of trial, Harold's attorney-at-law took the point, *in limine*, that the counts should not be tried together. He submitted that Harold should not be tried with his brother and further that the two counts against Harold should be tried separately.

You are a judicial clerk assigned to the judge trying the case. The judge has asked for a legal opinion on:

- (i) the merits of the submissions made by Harold's attorney-at-law; and
- (ii) whether there is/are any other submission(s) in relation to the form of the counts on the indictment, that could be taken.

Prepare the opinion.

QUESTION 5

Ronald and Rohan, two notorious gang leaders, were both charged with, and are being tried jointly for, the 2012 murder of Canon. The Crown's case is that both men chased Canon from a club to the club's parking lot and shot and killed him as he attempted to enter his car. Both men are viewed as high-risk prisoners having been implicated in other serious offences. They were also on the list of 'the most wanted men' before they were captured.

- (a) The Crown has statements from two witnesses, which are inconsistent with each other. At the committal proceedings/preliminary enquiry, the evidence from both witnesses had been submitted.

The statement from witness Perle White speaks to the victim attacking the two men who then began to chase him.

The statement from witness Merle Grey speaks to the two men shooting the victim.

At trial, the Crown called only witness Merle Grey. Perle White's name does not appear on the back of the indictment.

In response to the defence's submission that the Crown should call Perle White, the Crown submitted that the defence may call the witness itself or the judge may do so if she chooses.

As defence counsel in the case, what would you submit in response? Give reasons.

- (b) At the close of the case for the defence, defence counsel applied to visit the *locus in quo*. In refusing the application the learned judge stated:

"The defence has waited until the eleventh hour to make a request that would cause the greatest of upheavals and uprooting of the court. Furthermore, the accused men must be present at the scene. As you well know, both men are regarded as high risk and I refuse to take the chance, so late in the day, of something happening. Most importantly, however, with so much time between the incident and the trial, I do not see how a visit would serve a useful purpose."

Outline the considerations to be satisfied for permitting a view of the *locus in quo* during trial, and assess whether the reasoning of the judge in refusing the application was correct, giving reasons.

QUESTION 6

Quincy is on trial for wounding with intent. At the time of empanelment, defence counsel sought to peremptorily challenge a woman from the array who resembled the complainant's wife. The judge asked defence counsel why he was challenging the woman, and counsel told her his reason. The judge refused to allow the challenge.

During the trial, Quincy noticed two jurors and the wife of the complainant having a discussion. This was reported to the judge, who called the jurors separately into her chambers and spoke

with each of them alone. The judge later announced to the court that she had no reason for suspecting the jurors of wrongdoing. The jurors remained as part of the panel of jurors.

Quincy was convicted. After his conviction his counsel discovered that two other jurors should not have been empanelled; one because he has a conviction and the other, because he had deliberately impersonated another juror.

Analyse:

- (i) the judge's refusal to allow the challenge;
- (ii) the judge's treatment of the alleged communication between the two jurors and the wife of the complainant; and
- (iii) whether the discovery made by defence counsel can be the basis for a viable ground of appeal.

QUESTION 7

Ivory Peruk has been charged with burglary. At the time of her arraignment she refused to answer the Registrar and stood silent in the dock. Counsel for Peruk submitted that she herself was having a similar difficulty, as her client would not communicate with her. She therefore could not, at this stage, make any meaningful submissions to the court.

The judge reminded Peruk that the day before, she, Peruk, had addressed the court. Peruk looked past the judge to the painting behind him and remained silent. The judge, clearly irritated, announced:

"Mr. Registrar enter a plea of not guilty against this woman and let us proceed."

At the close of the Crown's case, the judge called upon Peruk to present her case. Before her counsel could respond, Peruk began screaming loudly. The court adjourned for a few minutes for her to compose herself. She stopped screaming but would grunt loudly from time to time. After

the third grunt, the judge ordered that she be removed from the court. The trial continued in her absence.

Peruk was found guilty and sentenced to seven years' imprisonment.

- (i) Was the judge correct in having a plea of not guilty entered? Give reasons.
- (ii) Discuss the judge's decision to remove Peruk from the proceedings.

QUESTION 8

On day 7 of the 10-day trial of Jorge Ramirez, it was realized that he had not been pleaded at the beginning of the trial. The judge promptly asked the Registrar to plead Ramirez, who pleaded not guilty. The trial continued.

Before the jurors were sent to deliberate, the judge informed them that where they could not all agree, they could return with a majority verdict. The judge went on to explain the numbers required for a majority verdict. However, she stated that she would wait for a more opportune time to direct them further on the issue of majority verdicts.

While in the jury room, the jurors requested and were given writing material, as well as the hammer alleged to have been used to commit the offence.

The Crown had inadvertently failed to tender the hammer into evidence. It had been presented in court and shown to various witnesses as an item marked to be tendered into evidence.

Ramirez was convicted and wishes to appeal.

Advise him whether he has any good ground(s) of appeal.

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