

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS 2019

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 6, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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**

### **Answer both (a) and (b)**

(a) Gregg Grunion was tried and found guilty of the offence of wounding with intent. He was sentenced to 15 years' imprisonment. The Crown's case was that during an argument with his neighbour, he stabbed the neighbour twice in the stomach. The argument concerned the neighbour's dog that, Grunion claimed, was always making a mess on his lawn.

After his conviction, Grunion instructed his attorney-at-law, who represented him in the trial, to file a notice and grounds of appeal on his behalf, within the prescribed time for filing an appeal. His attorney-at-law filed the documents as instructed but advised Grunion that he stood 'no chance' of succeeding on appeal. Based on that advice, Grunion withdrew the appeal.

While in custody, Grunion conducted his own research in the relevant law and thinks that his attorney-at-law was incorrect that Grunion stood 'no chance' of succeeding on appeal on the grounds filed.

Is there anything he can do now?

Advise Grunion.

(b) Figaro Figaro pleaded guilty to unlawful wounding and larceny/theft from the person. He was sentenced to three years' imprisonment on the charge for the unlawful wounding and a year's imprisonment on the charge for the larceny/theft. The sentences are to run consecutively.

Figaro, who represented himself, had explained to the Magistrate/Parish Court Judge that he had taken \$100 from the victim's pocket to buy food and that the small wound on her arm was not caused by a weapon, but from the buckle on the belt he was wearing at the time of the incident. The Crown's case was that Figaro had used a knife to cut the victim on her arm, causing her to drop her purse. He took up the purse and ran. The purse, which was not recovered, contained US\$350.

In sentencing Figaro, the Magistrate/Parish Court Judge remarked that, *“the senseless use of weapons has to stop”*.

Figaro wishes to appeal his sentence.

Advise him.

---

## **QUESTION 2**

Namika Weiss is a 24-year-old higgler. She was walking from the market balancing a basket of ground provisions on her head, when a police car, with a number of constables, drove up beside her and blocked her into a corner. One of the constables in the car looked in her direction and asked, *“Wait, is not you come from up Piggy Lane?”* Namika did not respond.

Two police constables came out of the car, each armed with a firearm, and demanded that *‘she give them a search.’*

Namika, who initially was alarmed by the constables’ conduct towards her, became very upset. She asked the constables, *“Why? I look like a thief?”* The constables did not say anything in response. When she tried to move past them, they did not allow her. Namika said angrily, *“You know what, search all you want, search, because there is nothing to find.”*

The constables took the basket off Namika’s head and proceeded to search through the contents. Unknown to Namika, her brother, who had visited her at the market shortly before she left for home, had hidden a firearm (small revolver) under the yams in the basket.

One of the constables, on finding the firearm, showed it to her and asked *“What is this?”* Before Namika could answer, she was roughly handcuffed and physically searched. Nothing unlawful was found on her person.

After the search, the constables asked her for her address. Namika gave them the address and they drove her there. The constables searched her house thoroughly. They seized a small bag

containing about ten ounces of marijuana. Namika admitted that the marijuana was hers, but for her personal use.

She was taken to the police station and charged with illegal possession of firearm and illegal possession of marijuana.

Advise, giving reasons, on whether the:

- (i) search of Namika's basket was lawful;
  - (ii) search of her person was lawful; and
  - (iii) charges against her can lawfully be brought.
- 

### **QUESTION 3**

Linda Loong is a cocaine addict. She has been convicted twice for dealing in cocaine. She has served seven years in prison. Her last conviction was in 2005. Linda is now charged again for dealing in cocaine.

The Crown's case is that Linda sold cocaine to an undercover police officer. The Crown alleges that the officer had approached Linda as she lay outside her usual spot at the old post office. He asked her if she had any of the '*white lady*'. Linda did not answer. The officer persisted for five minutes asking Linda for the drugs. Linda got up from where she was lying, and slowly walked away from the officer.

The next day, the officer returned and this time begged Linda for the drugs. He said he was desperate. After several minutes, Linda reached into her pocket, and removed a small bag of white powder. She stretched and handed the bag to the officer and asked, "*Will you leave me alone in peace now?*"

The following day, the officer returned with US\$20. He laid the money on the ground beside Linda. Linda hesitated but then took the money and put it in her pocket.

Over the next three days, a similar process occurred: the officer came, put US\$20 beside Linda who gave him a small bag of drugs.

On the sixth day, Linda was arrested and charged with four counts of possession of and dealing in cocaine in relation to the officer.

The Crown is not certain whether it should proceed with the prosecution of Linda and seeks your advice.

Advise the Crown.

---

#### **QUESTION 4**

You are a judicial clerk assigned to the Court of Appeal. The judges of appeal are hearing the matter of Derby Krett v R. You have been asked to prepare a legal opinion on the merits of the grounds filed by the attorney-at-law who appears for Derby. Having read the documents, you prepare the following summary of the relevant information:

*Derby Krett was tried and convicted for the offence of larceny/theft from the person. The incident occurred at a Jazz concert. The Crown alleged, that he, Derby, along with another man, stole a wallet containing US\$500 from the pocket of Anthony Stanton, a patron at the concert. The other man had deliberately pushed the patron onto Derby to cause a distraction. Derby used the opportunity to take the wallet from the patron's pocket. The Crown is relying on both videotape evidence and the evidence of eye-witnesses. Derby was pointed out at an identification parade.*

*In response to a comment made by the prosecutor just before Derby was to be pleaded, his attorney-at-law stood up and announced that his plea was one of not guilty and that the Crown should 'put up or shut up'.*

*A brief adjournment was then taken and upon resumption of the proceedings, the Crown called its first witness.*

*One of the witnesses called by the Crown was allowed to give evidence from behind a screen. The arrangement of the screen, due to the size of the courtroom, was such that only the counsel who was questioning the witness, along with the Magistrate/Parish Court Judge, could see him.*

*At the end of the case for the Crown, it had failed to establish that Derby was the same man who had been pointed out on the parade as being the thief. Defence counsel made a no case submission based on this failure.*

*Instead of upholding the no case submission, the Magistrate/Parish Court Judge, on the application of the Crown, allowed the Crown to reopen its case and call further evidence on the point.*

Derby was convicted and sentenced.

He is appealing on the following grounds that:

- (i) the failure to plead Derby renders the trial a nullity;
- (ii) it was not permissible for the Magistrate/Parish Court Judge to allow the witness to give evidence from behind the screen; and
- (iii) the Magistrate/Parish Court Judge had no basis in law for allowing the Crown to reopen its case and lead the relevant evidence.

Prepare the opinion.

---

### **QUESTION 5**

Pasha Naranja has been charged with the offence of rape. The allegations are that he followed a female student into a bathroom on a university campus, held a knife to her neck, and raped her.

On the third day of the trial, his counsel made an application to the judge that he be permitted to withdraw from the matter.

The judge asked him on what basis he wished to be permitted to withdraw. Before counsel could respond, Pasha interjected, *“Him waan mi fi plead guilty and mi not doing dat”*. Counsel informed the judge that he and his client were of different minds regarding the case and there was no way he could be of further assistance to him. Pasha insisted to the judge that he wanted to represent himself. Upon the judge’s enquiry as to whether that was a wise decision, Pasha responded, *“An innocent man don’t need no lawyer. I have God as my witness”*.

The judge permitted the withdrawal.

At the close of the Crown’s case, Pasha told the judge that he wished to change his plea from not guilty to guilty. After questioning him, the judge accepted the plea and set the matter for a week later, for sentencing. On the date set for sentencing, Pasha returned with a new Counsel.

Counsel made an application that Pasha be allowed to change his plea. The judge asked what was the basis for the change of plea. Counsel explained that it was because Pasha did not have legal representation at the time he pleaded guilty. The judge refused the application and sentenced Pasha.

You are an intern in the office of the Director of Public Prosecutions/Attorney-General and have been asked your opinion on whether Pasha had a fair trial where the judge:

- (i) allowed counsel to withdraw his representation in the middle of the trial; and
- (ii) refused to allow him to change his plea of guilty to not guilty.

Draft the opinion.

---

## **QUESTION 6**

Lazy Kris, wishes to appeal his conviction for wounding with intent. The Crown’s case was that Lazy Kris threw a pitchfork at Alanzo, a member of a rival football club. The pitchfork hit him on

the head and he was rendered unconscious. As a result of the injury, Alanzo received 26 stitches to his head.

Your senior who is counsel for Lazy Kris has asked for advice on the correctness of the judge's decisions in three instances during the trial.

- (i) During the empanelment, the pool of potential jurors was depleted. The Crown submitted that the judge could direct the police officers assigned to the court to bring persons from the streets and nearby businesses to complement the numbers. Counsel objected to this on the basis that these persons would not be randomly selected, as is required by the law. The judge rejected the objection from counsel and instructed the police officers to seek the extra persons as suggested by the Crown. The last two jurors who were empanelled came from these extra persons.
- (ii) On the second day of the trial, juror number five informed the judge, by note, that he has now realized that the trial related to an incident that he had prior knowledge of, and that the victim is the son of a church sister of his mother. The judge convened an enquiry in the presence of only the relevant parties. During the enquiry, the judge asked the juror how he came to know of the incident. The juror said his mother had previously mentioned the incident to him. When the judge asked him how well he knew the victim, he explained that he did not know him personally, but that he knew of him from what his mother had told him. When asked if he could deliver a true verdict based only on the evidence in the matter, the juror answered in the affirmative. Defence counsel submitted that the judge should discharge the juror. The judge refused to discharge him.
- (iii) After a verdict of guilty as delivered and the jury discharged, another juror sent a note to the judge. The note stated that, during their deliberations, the jurors had heard from the foreman that the accused, Lazy Kris, was a known troublemaker, was always involved in fights, and has a prior conviction for wounding. The judge shared



the note with both counsel in the matter. Defence counsel submitted that the jurors, who were still in the precincts of the court, should be recalled and questioned. However, the judge took the view that there was nothing he could do at that point.

Lazy Kris was sentenced to 15 years in prison.

Advise senior counsel as requested.

---

### **QUESTION 7**

You appear along with defence counsel Melinda Mars in the matter of R v Jefe Suarez. Jefe is charged with the offence of burglary/larceny/theft. The Crown alleges that he entered a house by breaking a glass window and squeezing himself through the burglar bars covering the window and then proceeded to rob the occupants. It is further alleged that after the robbery, he forced the occupants to open the front door through which he escaped.

The Crown also alleges that the DNA profile of blood from the window, matches the DNA profile of Jefe.

Defence counsel requests your opinion on two issues in the case with which she is grappling.

- (i) The first issue concerns the refusal of the Crown to call one of the three witnesses who was in the house at the time of the alleged incident and had given a statement in the matter. The witness's evidence was submitted at the committal proceedings/preliminary enquiry and his name appears on the back of the indictment preferred at trial.

In his evidence, the witness directly contradicts the evidence of the two other witnesses whom the Crown intends to call. The witnesses for the Crown state that the offence had been carried out by a small man who had the body type of a boy and so could fit through the burglar bars of the window of the house. This description fits Jefe. The other witness, however, stated that the offence was carried out by a tall muscular man.

- (ii) The second issue concerns instructions received from Jefe. Jefe's instructions are to suggest to the police officers that they were lying about him and that they had planted his DNA on the scene in a bid to get him out of the community. The reason they wanted him out was that they believed him to be the leader of one of the community gangs, one of whose members had recently injured a police officer in a drive-by shooting.

Melinda is unwilling to make this suggestion because there is no evidence to support Jefe's allegations. Furthermore, Jefe does not intend to give evidence himself.

Advise Melinda on the approach she should take in response to both issues.

---

### **QUESTION 8**

Peter Pan was tried and convicted for the offence of abduction.

As part of his summation, the judge instructed the jury in the following way:

*"Ladies and gentlemen of the jury, let me remind you that your verdict needs to be unanimous one way or the other."*

The jurors were sent out at 3:00 pm to begin their deliberations.

At 3:45 pm, the foreman sent a note to the judge requesting further assistance on the law regarding an element of the offence of abduction. The judge consulted briefly with both counsel then summoned the jury back into court. The judge then reread the directions on the law in relation to abduction that he had given the jury earlier.

The jury was then sent back out at 4:10 pm to continue their deliberations. They returned at 5:00 pm with a majority verdict. The judge refused to accept the verdict and reminded the jury of the earlier instructions he had given them in relation to the need for a unanimous verdict. He sent them out again at 5:10 pm. They returned 45 minutes later with a unanimous verdict of guilty.

Based on the above, counsel who appears for Peter, insists that the conviction is bad.

Advise counsel who appears for the Crown, whether she should concede or not. Give reasons.

---

**END OF PAPER**