

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS, OCTOBER 2014

CRIMINAL PRACTICE AND PROCEDURE

(OCTOBER 2, 2014)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Sally Stubbs and Simon Strong were seen by Constables Quinten Quick and Allison Alert, running from the National Commercial Bank in the capital. Sally and Simon jumped into a car that was parked around the corner from the bank. As the car was about to move off Constable Quick jumped into the middle of the road, pointed his firearm at the car and shouted, "Police, stop!" The driver, Simeon Sampson, also pulled a firearm and pointed it in the direction of Constables Quick and Alert, who were about 16 feet away, and fired two shots at them.

The car drove away and the constables gave chase. Shots were exchanged and Constable Quick was shot in his arm. The car in which Sally and Simon were travelling crashed and Sally, Simon and Sampson were apprehended on the spot and charged.

- (a) Draft the indictment.

- (b) Explain whether this would be a fit case for consecutive sentences to be handed down should there be a conviction.

QUESTION 2

Watson and Bailey work at United Bank in your jurisdiction. They are charged with obtaining money by false pretences/theft. The case surrounds wire transfers purportedly made by Brown, a client at the bank, to Watson's account in London by requisitions purportedly signed by Brown. It is alleged that the requisitions were fraudulently prepared by Watson and Bailey. In evidence it is revealed that the

transaction was done through correspondent banks in Canada and New York. Defence counsel argues that the local court has no jurisdiction as nothing was obtained or appropriated locally. You appear for the prosecution.

Advise the court of your position.

QUESTION 3

Answer both (a) and (b).

(a) A prosecutor is about to close the preliminary inquiry without calling all the witnesses reasoning that there has already been sufficient evidence to make out a prima facie case. Defence counsel demands that the witnesses be put up so he can “test them”. The magistrate rules refusing to so order but advising the prosecutor that these unused witnesses cannot be called at the trial.

Discuss whether the Magistrate’s ruling is correct.

(b) The prosecution have closed their case in Fineas Figg’s summary trial and the resident magistrate/magistrate has ruled that there is a case to answer. When Figg’s counsel, H.G. Wilson announced that his client will give sworn testimony the resident magistrate/magistrate adjourned proceedings and invited counsel into his chambers. After speaking with the resident magistrate/magistrate, H.G. Wilson reported to Figg that the court is leaning to convict and that Figg should consider changing his plea to avoid a long prison term. Wilson repeatedly emphasised that Figg must nevertheless “exercise his free choice”.

Figg changed his plea to guilty and was sentenced to six months’ imprisonment.

Explain whether Figg has a viable basis for an appeal.

QUESTION 4

Section 6 of the Obscene Art Act provides that:

“Any person who sells 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 \$1000.

On January 14, 2007, Roger Vulgar was selling obscene paintings from a sidewalk stand. He called over Carol Naïve, a sixteen (16) year old girl on her way home from school and offered to sell her an obscene painting. Immediately Carol came over, saw the obscene painting, liked it and purchased it.

Constable Scruple was nearby and witnessed the offer and sale. He charged Roger Vulgar on an information/complaint as follows:

“Roger Vulgar, on the 14th day of January 2007 in the parish of St .Andrew, offered for sale and sold an obscene painting to Carol Naïve, a girl under the age of 17 years, contrary to section 6 of the Obscene Art Act.”

The information/complaint was laid on January 15, 2007, and Vulgar was brought before the Resident Magistrate’s/Magistrate’s Court.

The matter was set for trial on February 22, 2007. On this date, on the application of the defence, the matter was adjourned and set for trial on April 10, 2007. On April 10, 2007, the matter was again adjourned on the application of the defence and set for trial on July 17, 2007. On both days, the basis of defence counsel's application was that he needed more time to prepare Vulgar's defence.

On July 17, 2007, Roger Vulgar pleaded not guilty to the information/complaint. His counsel then submitted that the information/complaint was bad for duplicity. After hearing defence counsel's arguments, the prosecutor conceded that the information/complaint was duplicitous.

The prosecutor applied for an amendment to the information/complaint to delete reference to the sale. The prosecutor then caused another information/complaint to be laid charging Roger for the sale of the painting. After hearing submissions from both counsel, the Resident Magistrate/Magistrate granted the amendment and approved of the trial of both informations/complaints together.

Defence counsel then applied for an adjournment saying that in respect of the second information/complaint which was just laid, he needed time to prepare his defence. The Resident Magistrate/Magistrate refused to grant the adjournment ruling that, in the circumstances, the defence could not be prejudiced as the allegation of a sale was contained in the initial information/complaint.

Vulgar was pleaded to the two informations/complaints. He pleaded not guilty to both. The trial proceeded on the two informations/complaints, the first of which now reads:

"Roger Vulgar, on the 14th day of January 2007 in the parish of St. Andrew, offered for sale an obscene painting

to Carol Naïve, a girl under the age of 17 years, contrary to section 6 of the Obscene Art Act.”

And the second of which reads:

“Roger Vulgar, on the 14th day of January 2007 in the parish of St. Andrew, sold an obscene painting to Carol Naïve, a girl under the age of 17 years, contrary to section 6 of the Obscene Art Act”.

Vulgar was convicted on both informations/complaints and has appealed.

You are a Clerk to a Judge hearing the Appeal who has requested your reasoned legal opinion on the following issues:

- (1) Was the Clerk right to concede that the information/complaint was bad for duplicity?
- (2) Was the Resident Magistrate/Magistrate correct to grant the amendment of the information/complaint in light of the clerk’s concession?
- (3) Was the second information/complaint valid?
- (4) Was the Resident Magistrate/Magistrate correct to refuse defence counsel’s application for an adjournment?
- (5) Was the Resident Magistrate/Magistrate Court the appropriate Court to try the informations/complaints?

QUESTION 5

Answer both (a) and (b)

- (a) Phillip was indicted for the gruesome murder of his common-law wife. A female juror's name was called. She was challenged by Phillip's counsel as soon as she entered the jury box. This was his third peremptory challenge. Only male jurors had been empanelled. The trial judge asked counsel why he challenged her and counsel replied "... because she is a woman." The challenge was not permitted. The female juror was empanelled. The jury returned a verdict of guilty. Phillip is of the view that he was denied his right of challenge and wishes to appeal.

Advise him on his prospect of success.

- (b) Explain the circumstances under which a resident magistrate/magistrate may reverse the decision of another resident magistrate/magistrate not to grant bail.

QUESTION 6

Answer both (a) and (b).

- (a) Daley is charged with murder. It is alleged that he and others, being armed with guns, robbed a teller of the ABC Bank of a certain sum of money and then killed her. You have been assigned to defend Daley. During the empanelling of the jury, Daley tells you that one of the jurors called to the jury box is related to a teller employed at a different branch of the bank. You have already exhausted your peremptory challenges.

What course is now open to you? Explain.

- (b) The case against Daley has had much coverage in the media including reportage on street protests of the police's failure to conduct regular patrols in the banking district. You are Daley's counsel.

What can be done to ensure that he has a fair trial despite the media coverage?

QUESTION 7

At Jason's trial in the Supreme/High Court Everton Taylor, an eyewitness whose name was on the back of the indictment, was not called by the prosecution. Just before the prosecution closed its case counsel for the defence enquired of prosecuting counsel the reasons for not calling the witness. Prosecuting counsel responded by saying that the witness was not reliable but gave no grounds for her opinion.

After the defence closed its case, His Lordship decided to call Taylor, who provided damning evidence against the accused, Jason. He was convicted.

Jason wishes to appeal and is seeking your advice on whether he has any good legal basis for an appeal, giving reasons.

Advise Jason.

QUESTION 8

Ashford was indicted in the Supreme/High Court for rape. During the trial the virtual complainant's torn undergarments were tendered by the prosecution. The prosecution claimed that their condition showed "force and resistance". The defence countered that the underwear was not strongly made and could be torn by "hurried removal".

After the jury had retired for three hours to consider their verdict, they handed a note to the jury officer for the attention of the judge; the note read that they had agreed a majority verdict of "not guilty". Having read the note, the judge instructed the jury officer to tell the jury that they should continue their deliberations until they had reached a unanimous verdict as he had not given them any direction on a majority verdict.

The jury then sent another note asking for the undergarments so that they could "test its strength".

The judge directed the jury officer to give it to them.

The jury, fifteen minutes thereafter, returned a unanimous verdict of guilty.

The communications were not made public, and counsel for the defendant was not made aware of them until after the verdict.

Ashford wishes to appeal against his conviction. Prepare the grounds and skeleton argument.