

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2016

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 9, 2016)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Anton Badman is charged with the offences of wounding with intent and robbery with aggravation. The matter has been before the court for the last five years and has been set for trial for as many times, but for various reasons has not begun: once because of other matters on the court list, twice because there were not sufficient jurors and twice due to adjournments on the part of the Crown and defence respectively.

On the sixth trial date the matter also failed to start. This was due to the absence of the Crown's witnesses. The learned trial judge was quite annoyed and spoke strongly to Crown counsel, citing Crown counsel's excuses for their absence as "unacceptable." "The Crown cannot get its act together. I have had enough."

The defence has also been reliably informed that the complainant had gone to two different doctors as a result of the incident and that each doctor had issued a medical report. Report B, which was later in time, spoke to the injuries of the complainant as being defensive wounds, while Report A, the earlier report, did not disclose any findings on that issue. The prosecution has only been served Report B. The defence thinks this is a good opportunity to make an application on behalf of its client.

- (i) What application(s) should the defence make?
  - (ii) What is the likelihood of success?
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## **QUESTION 2**

Carlton Dankbar stands charged before the Supreme/High Court on an indictment for murder. The case against him is that he shot and killed a young man at a party. Dankbar alleges that he was acting in self-defence and that the young man had attacked him while he (Dankbar) was relieving himself outside the club.

After the Preliminary Enquiry/Committal Proceedings, the Crown had three witnesses as to fact on its list. At the trial, however, the name of one of the three witnesses did not appear on the indictment. When the defence raised the matter with the Court, the Crown submitted that since the Preliminary Enquiry/Committal Proceedings, the witness had given another statement to the police, retracting aspects of his first statement. The defence wishes to cross-examine this witness.

- (i) What course(s) of action is/are open to the judge if an application to call this witness is made?
- (ii) Before the summation began, the defence submitted that the judge should give the exact directions specified in the Bench Book specimen directions on self-defence for your jurisdiction. The judge rejected this submission. During the summation the judge omitted to direct the jury on a point of law.

With the aid of relevant authorities, comment critically on the issues raised by these developments.

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### **QUESTION 3**

Engel Einfahrt is charged on an indictment containing three counts: wounding with intent, larceny of a computer and receiving of the said computer. He pleaded not guilty to wounding with intent but guilty to unlawful wounding. He pleaded not guilty to both the larceny and the receiving.

The trial judge rejected the plea to unlawful wounding and the matter proceeded to trial on the counts of wounding with intent and larceny.

The jury found him not guilty of wounding with intent, but guilty of larceny.

The judge then invited the jury to return a formal verdict of not guilty on the receiving count.

The judge then proceeded to sentence Einfahrt both on his plea of guilty to the unlawful wounding and on the larceny count of which he had been found guilty.

- (i) Advise on the correctness of the judge's direction to the jury to return a formal verdict of not guilty on the receiving count.
  - (ii) Engel Einfahrt wishes to appeal his conviction of unlawful wounding. Advise him.
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#### **QUESTION 4**

- (a) Guido Hals is before the Magistrate's/Parish Judge's Court for the offence of possession of marijuana. The matter is on the trial list before Magistrate/Parish Judge Merkel. The trial began and was adjourned for continuation on March 8, 2016. On the said date Magistrate/Parish Judge Merkel was unavailable and the matter was mentioned before Magistrate/Parish Judge Gabriel. On the basis of his instructions, counsel made an application for Guido Hals to change his plea to one of guilty. Magistrate/Parish Judge Gabriel denied the application, on the basis that he did not have any jurisdiction to deal with the matter.

Comment on Magistrate/Parish Judge Gabriel's decision that he had no jurisdiction.

- (b) Assume that Magistrate/Parish Judge Gabriel had acceded to counsel's application and the Magistrate/Parish Judge set the matter for sentencing on the following day. On March 9, 2016, Guido Hals appeared and informed the court that he wished to withdraw his guilty plea made on the previous day and revert to his earlier plea of not guilty. Magistrate/Parish Judge Merkel, who has returned, insisted that she wished to continue her matter in which Magistrate/Parish Judge Gabriel had "meddled".

Magistrate/Parish Judge Gabriel asks you to write an opinion as to how the matter should proceed.

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### **QUESTION 5**

Herro Muller and Franz Wegen have been convicted in the Supreme/High Court of burglary and larceny and each now wishes to appeal his conviction. The witnesses in the matter, a family of three, are all set to migrate and have been waiting on the trial to be completed in order to do so. After many false starts, a trial date had been agreed. On the day of trial, Muller did not appear. His counsel, who was present, had no information as to his whereabouts. Despite objections from Muller's counsel, the trial judge began the trial.

During the trial, counsel for Wegen and the judge had a major disagreement over the judge's ruling to admit into evidence a pair of gloves tendered by the Crown. Counsel for Wegen threatens to withdraw from the matter.

Additionally, counsel for Muller wishes to cross-examine the witnesses relying on instructions Muller has sent him since being on the run. Crown counsel objects to this.

- (i) Critically analyse the trial judge's decision to begin the trial;
  - (ii) What ruling(s) should the trial judge make in light of defence counsel's threat to withdraw and Crown counsel's objection to the proposed cross-examination.
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### **QUESTION 6**

You appear for Karl Ruhe who is being tried for rape. The judge, in completing his directions to the jury, said the following:

*“Madam Foreman and your members, all of you are big people, adults, that was why you were chosen to try this matter. I do not expect this ‘he said-she said’ story to detain you for long. Please knock on the door when you are ready.”*

Forty-five minutes later the judge received a note from the jury requesting further directions on the evidence. The judge recalled the jury and immediately embarked on a recapitulation of the evidence. When he was finished he sent them out again.

Forty minutes later, the jury returned a unanimous verdict of guilty. After they were discharged and left the jury box, but before they had dispersed, one of them whispered to the registrar that the foreman had misled the court about the verdict and that it should have been not guilty. The registrar duly informed the judge.

The next day, during the sentencing, the judge mentioned to the attorneys-at-law what the registrar had told him, but quickly added that there was nothing he could do, as the matter was out of his hands.

Karl Ruhe wishes to appeal. Advise him as to whether he has any ground(s) of appeal and the likelihood of success.

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### **QUESTION 7**

You represent Phillip Quellen, an 18-year-old, who had grown up in various foster homes. He is on trial for illegal possession of firearm and robbery with aggravation arising from the same incident. On the first trial date, Quellen pleaded guilty to illegal possession of firearm but denied using it to commit robbery. He was found guilty of robbery with aggravation.

After the registrar read the allocutus, and before either Quellen or you could respond, the trial judge remarked that the offences were quite serious, heinous and prevalent. He further

remarked that he had heard the evidence and could find no mitigating factors to consider in sentencing Phillip.

He ignored your request for a report on Quellen's general status and character, stating there was no need to prolong the inevitable. Quellen was sentenced to ten years' imprisonment on the firearm charge from a maximum term of fifteen years and fifteen years' imprisonment on the robbery with aggravation charge from a maximum of thirty-five years. The sentences are to run consecutively.

With the aid of authorities, comment on the:

- (i) procedure adopted by the judge for the sentencing; and
- (ii) appropriateness of the sentences.

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## **QUESTION 8**

Ines Madchen is on trial on an indictment for causing grievous bodily harm before a mixed jury of men and women. Juror number three had once been convicted of wounding and had been sentenced to and served three years' imprisonment. This fact was not known to any party in the proceedings.

During the deliberations, the foreman left the jury room to make an urgent phone call.

After an hour of disagreement, with tempers flaring, the jurors decided to consult a Ouija board to arrive at their decision. Upon returning to the court room the following occurred:

*Registrar: Mr. Foreman how say you? Is the defendant guilty or not guilty of the offence of causing grievous bodily harm?*

*Foreman: Not guilty.*

*Judge: What did you say?*

*Foreman: I meant to say guilty; the verdict of the jury is guilty!*

*Registrar: You say that the defendant is guilty of causing grievous bodily harm, is that the verdict of you all?*

*Foreman: Yes.”*

The other jurors nodded their heads in agreement with the foreman’s last response.

Having been found guilty, Madchen was sentenced by the judge.

One of the jurors, Miss Conscientious, wrote a letter to defence counsel outlining the conduct of the foreman in leaving the room and the use of the Ouija board. Furthermore, owing to intense investigations after the trial, defence counsel uncovered the information regarding juror number three.

You are doing your in-service training with defence counsel for Madchen. He has asked you to write an opinion on whether or not Madchen has any good ground(s) of appeal.

Prepare the opinion.

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**END OF PAPER**



