

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2017**

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 8, 2017)

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

Constable Parks while on foot patrol saw from a distance Brian punch Peter in the face. The punch caused Peter's nose to break. Constable Parks raced to the scene and arrested Brian on suspicion of assault occasioning actual bodily harm. Constable Parks searched Brian and removed a cellphone. Brian attempted to resist the arrest and was further charged with resisting arrest. Constable Parks took him immediately to the police station.

The counts, assault occasioning actual bodily harm and resisting arrest, were tried together in a joint trial. Brian was not pleaded at the start of the trial.

Brian was acquitted of the assault occasioning actual bodily harm on the basis that Peter had attacked him first, and Brian was acting in self-defence, a fact which was unknown to Constable Parks. He was however found guilty of resisting arrest.

Brian wishes to appeal his conviction. He wishes to argue that the officer was wrong to have arrested and then searched him, and that since he was acquitted of the assault he should not have been found guilty of resisting arrest. He further wants to know the effect of his not having been pleaded at the start of the trial.

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

QUESTION 2

Nigel has been charged with murder. At his trial the Crown wished to tender scientific evidence in relation to a knife found at the scene of the crime. The blood type found on the knife matched Nigel's. Nigel's attorney objected on the basis that the scientific evidence had just been served on him. The Crown, by way of explanation, stated that they themselves had just received the results from the government forensic laboratory.

Further, it emerged that a video recording that had been recovered from the victim's house had been destroyed. The recording showed the entry of the alleged assailant on to the property where the deceased was killed. Counsel for Nigel objected strongly to the trial continuing in the absence of the video. However the Crown asserted that an officer from the video unit was prepared to give evidence as to what he had seen on the tape.

How should the trial judge address both applications?

QUESTION 3

Young counsel, Miss Finally Over, has just graduated from Law School and has accepted legal aid assignments in relation to two clients, Kunta Kinte and Nervosa Nanan.

- (a) In preparation for trial, defence counsel recognized that her client Kunta Kinte may have some mental issues. She has however managed to get some instructions from him, in particular, in relation to a witness who seems to offer solid support to his defence of alibi.

Give your opinion on how Miss Over should proceed.

- (b) At the time of arraignment, in contrast to counsel's written instructions and advice, Nervosa Nanan pleaded guilty. Miss Over was amazed and asked the court for a brief adjournment to speak with her client. The adjournment was granted. The accused explained that she was confused at the time by the wording of the charge and that is why she had pleaded guilty. Miss Over asked the judge to permit the accused to be re-pleaded. The judge asked why, given that he had heard the plea clearly on the first occasion.

What should Miss Over's submission(s) to the court be?

QUESTION 4

Jill is charged with the murder of Jack. The Crown alleges that Jill stabbed Jack with a knife whilst Jack was drinking in a busy pub.

- (a) The Crown has three eyewitnesses who identify Jill as the assailant. The Crown also has a letter sent by Jill to Jack shortly before the stabbing in which Jill threatened to '*get even*' with Jack following an argument between them over money.

At the preliminary enquiry/committal proceedings all three witnesses gave evidence/statements were tendered.

At the trial the Crown calls only one of the witnesses in chief, tenders another for cross-examination and explains that the third had become unreliable.

The defence applied to the judge for the Crown to be called upon to examine all three witnesses in chief so that the defence can have the opportunity to cross-examine them.

What should the judge's ruling be? Give reasons.

(b) Jill gave evidence on her own behalf, stating that she was not present at the scene but had been at a football match at the time of the offence. The match had been held in the distant district of Honey Hedge. In the vicinity of the football venue en route to her home, she had been stopped by one Constable Ginger who had warned her for speeding.

The Crown did some quick investigation and found Constable Ginger who denied stopping Jill on the day in question. The Crown applied to call Constable Ginger.

What should the judge's ruling be? Give reasons.

QUESTION 5

You appear for Adam Reynolds who is charged for rape and wounding with intent of a five-year-old schoolgirl, Matilda. She was found abandoned in a gutter, badly mutilated. The Crown alleges that apart from eyewitness evidence, DNA evidence linked seminal fluid found on Matilda to Adam.

The residents of the jurisdiction were incensed at the time the incident occurred, in particular, the community of Cashew where both Adam and the complainant are from and where the trial is to be held. The day before the trial, the evening news rebroadcast interviews conducted after the incident with citizens venting their views that Adam "*should be hanged for what he did*". On the morning of the trial, Adam whispered to you that he recognized several of the persons sitting in the jury pool as people from his community where the incident had occurred.

You have concerns about securing a fair trial for your client. With the aid of authorities analyse the option(s) available to you.

QUESTION 6

Johnny Bravo is on trial for the offence of having sexual intercourse with his 13-year-old neighbour, Jane. During the trial Johnny absconded.

The trial continued in his absence. He was found guilty and sentenced. One week later he was arrested.

Johnny now wishes to appeal his conviction on the basis that he should not have been tried in his absence as he wanted to give evidence. Further, he had recently been shown Jane's diary in which she had written that it was her father who had been having sex with her, and not Johnny.

Advise Johnny as to how to proceed in relation to the diary and his chances of success on appeal.

QUESTION 7

Conchita is charged with unlawful wounding and larceny in the Magistrate's/Parish Court. On the day of her trial her attorney was not present. This was the third time consecutively that her attorney had been absent. Conchita had no explanation for the court except to assert that she had paid her attorney all her fees. The magistrate/parish judge revoked Conchita's bail and told her that her trial would begin the following day, with or without her attorney.

The following day, the court received a message that the attorney was in the Court of Appeal. The judge instructed that Conchita be given a copy of the file and began the trial. During the process the magistrate/parish judge assisted Conchita as much as possible.

The information/complaint reads:

"Conchita Connor on the 18th day of January 2017 in the parish/district of Bali, unlawfully and maliciously wounded Peppy Panton with intent to steal and did steal Peppy Panton's purse containing \$300."

The trial was short, lasting one day and Conchita was convicted.

She wishes to appeal. Advise her whether she has any grounds of appeal. Give reasons.

QUESTION 8

Marky Mark is charged with the offence of using chemicals without a licence. The sentencing provision provides as follows:

"Upon summary conviction before a magistrate/parish judge such person shall be liable to imprisonment for a year or to a fine up to three times the equivalent of the licence fee that should have been paid, or to both such fine and imprisonment."

Marky is unrepresented and pleads guilty. He however disagrees with the Crown's version of events as to how he came to have the chemicals in his possession and the quantity he had. The judge told him he had chosen of his own free will to plead guilty and if he had had a problem with the Crown's version, he should have pleaded not guilty. She then sentenced him to two years' imprisonment as well as payment of the maximum fine. Before the court adjourned for the day,

the judge sent for Marky and reduced his sentence to one year's imprisonment. She also reduced the fine. Marky wishes to appeal.

Opine on the possible bases on which he may do so. What is the likelihood of success?

END OF PAPER