

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, MAY 2022**

CRIMINAL PRACTICE AND PROCEDURE

TUESDAY, MAY 24, 2022

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, **not their names**, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.

- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, 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.**
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I MAY 2022 EXAMINATIONS, CRIMINAL PRACTICE AND PROCEDURE DROP BOX on TWEN** by **Wednesday, May 25, 2022 NOT LATER THAN** 1:00 p.m. (Jamaica), 12:00 p.m. (Belize) and 2:00 p.m. (Eastern Caribbean).
- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between **1100 - 1185** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I – 1100 - 1185”**.

- Year I students with Examination ID numbers between **1186 - 1271** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year I - 1186 - 1271**”.
 - Year I students with Examination ID numbers between **1272 - 1357** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year I - 1272 - 1357**”.
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Rodden Rudd was tried for the offences of rape of Angelina Angst and the unlawful wounding of Sergeant Sinner. He was found guilty of the rape but acquitted of unlawful wounding. He wishes to appeal his conviction.

After his conviction and sentence, Rudd fired defence counsel and engaged you to bring an appeal on his behalf. You are in possession of the trial transcript as well as Rudd’s file from his former defence counsel. You have diligently prepared the material and summarized the contents as represented below.

CASE FOR THE CROWN

During the trial, the Crown called Angst along with three other witnesses: Iga Raducan, Dr. Fritz and Sergeant Sinner.

Angelina Angst

Rudd and Angst were at the time of the offence dating each other.

They were introduced by mutual friends Iga Raducan and her boyfriend Reilly Halep, on March 01, 2020, at a tennis match where both Angst and Rudd were competing.

They were both avid tennis players, and after chatting for a while, they realized that they had a lot more in common.

On the same evening, Rudd invited Angst to a movie, and she accepted. After that, they went out almost every evening for that week.

Angst explained to Rudd that she was recovering from a break-up and believed that part of the problem then, was that the relationship “*went too fast*”. She said she had high hopes for this new relationship and now wanted to take it slowly in the hope of a better outcome.

Rudd was of the opposite mindset. He told Angst that for him “*sealing the deal*” was the aim. He wanted the relationship to become intimate quickly, because otherwise, he felt unsure where he stood, and this, would hinder his commitment to her. Angst told him that she would make waiting “*worth his while*” and he laughingly responded “*ok, as long as I’m not waiting in vain.*”

On March 15, Rudd invited Angst to dinner and afterwards he suggested they go back to his apartment. Angst agreed. When they arrived, he furnished a bottle of rum cream and turned the television on to a pornographic channel. Thereafter, they both engaged in heavy petting. At some point in the process, Rudd sought to completely remove Angst’s clothing.

She told him he did not have her permission to do so and reminded him of the reason she wanted to take the relationship slowly. She gathered her things and headed to the door. Rudd followed her, blocked her path, and told her they had passed “*the point of no return.*” He then pushed her against the door and forced himself upon her. During the act, he hit her knee against the wall causing it to become swollen.

At the end of the act, he apologized and told her “*you could remain by me for the night, since we are friends now.*” She declined his offer and called Raducan who came and collected her from Rudd’s apartment.

Raducan stayed with her that night and Angst told her in detail what had occurred between her and Rudd. The following morning, Raducan went with her to make a report at the police station and remained with her throughout the entire process.

Iga Raducan

In evidence, Raducan said that she received a call from Angst and drove with Halep to an address she gave her. They collected Angst who looked visibly upset. She asked

Angst what had happened, and Angst did not reply.

When they arrived at Angst's apartment, Raducan decided to stay with her. Angst told her everything that had happened (which she repeated for the benefit of the court). She accompanied Angst both to the police station as well as to the doctor.

She also stated that on March 10, she overheard Rudd talking to Halep about the relationship between himself and Angst. Rudd explained to Halep, that "*if we don't have sex soon, then I am wasting both my time and money.*"

In cross-examination, Raducan agreed that her relationship with Halep had ended because she was supporting Angst while he was supporting Rudd. She also explained that she had not told Angst about the conversation (between Halep and Rudd), because she did not want to interfere in what she thought, were still early days of a fledgling relationship.

Dr. Fritz

Dr. Fritz gave evidence that he had vaginally examined Angst on March 11, and prepared a medical certificate. He then gave the details of his findings. He also explained that he noted that her right knee was swollen. There was no cross-examination of the doctor.

Sergeant Sinner

Sergeant Sinner gave evidence of all that he had done in relation to the case.

He also stated that on March 17, 2020, Rudd was arrested. During the arrest, he battled with the police officers, injuring Sergeant Sinner who got a cut on his arm in his attempt to subdue Rudd. Rudd was taken to the station where he was charged with both the offences of rape and unlawful wounding. Sinner did not go to the doctor but dressed the wound himself because, "*it was not too deep.*" He showed the court a small scar which he said was the remnant of his injury.

In cross-examination, he admitted that at the time of arrest that neither he nor his fellow officer was dressed in uniform.

CASE FOR THE DEFENCE

The defence was one of consent. Rudd gave evidence in which he stated that he believed that Angst had reported the sexual encounter as rape, because at the end of the sexual act, she expressed expectations that their intimacy meant that they were now in a relationship.

He said that he made it clear to her that he was not yet ready for a relationship, and, while they had had a wonderful time, that is all that it was at this time.

She got angry and wanted him to take her home, but he refused because he was tired. He however told her to take a taxi and that he would pay for it. She then made a few calls and later left without saying goodbye. As she was going through the door, in her hurry, she stumbled to the floor. That must have been how she hurt her knee.

In cross-examination, he explained that the reason why he had not submitted to the officers upon arrest was because he did not know who they were nor why they were holding onto him. The first time he became aware of the reason for his arrest was when he was taken to the police station where he was then informed.

He also denied the conversation Raducan testified he had had, with Halep.

He further denied any other evidence on the Crown's case that was contrary to his case.

TRANSCRIPT

- (a) At the stage of empanelment, a potential juror wrote a note to the judge, which was handed directly to him. In it she explained that she had no problem with sitting in the case, however she had been raped a long time ago during a robbery, by unknown assailants, and she just wanted to be frank with the court. When her number was called, the judge disclosed the note to both counsel. Defence counsel, who had already used all the peremptory challenges, made a challenge for cause, and asked the judge to excuse the juror based on what was '*contained in the note*'.
- (b) The judge refused to allow the challenge, stating that the note did not disclose a proper basis in law to do so. The juror was sworn in as juror number 5.

- (c) Before the Crown could close its case, defence counsel made an application for the Crown, or alternatively, the judge, to call Halep. He grounded the application on the basis that, *'the jury needed to get the full picture'*.

Halep had also given a statement, which had been properly served on the defence.

The gist of Halep's statement was that he was aware that Angst and Rudd were dating. He said that they both seemed happy in the relationship. He further stated that when Angst came in the car, in response to Raducan's question, *'what had happened,'* Angst answered, *'nothing'*.

The Crown responded to defence counsel's submission outlining the reasons why the court should not grant the application. The court acceded to the Crown's arguments and rejected the application.

- (d) During the case for the Crown, the judge repeatedly interrupted the case, asking questions that interfered with the flow of the examination and which appeared irrelevant to the issues in the trial. At one point, he took over the examination in chief of the complainant, Angst.
- (e) During the closing argument counsel for the Crown, began by explaining to the jury that she herself had *"faced sexual assault."* She further explained that *"it was important that we do not use our own experiences to prevent us from doing our duties but rather to aid us in doing them."* Defence counsel objected to the comment. The judge immediately told the jury to disregard the comment from counsel for the Crown.
- (f) The jury returned with unanimous verdicts on both counts after retiring for less than 15 minutes.

The foreman announced that the jury had found the accused not guilty of rape but guilty of unlawful wounding.

While everyone else was still in the courtroom, but after Rudd was led from the court, the foreman, who was still in the jury box along with the others, stood and

hesitantly told the judge that they had made an error in delivering the verdicts. The foreman said that they had intended to say guilty of rape but not guilty of the unlawful wounding.

The judge immediately instructed the registrar to go through the process with the jury of making the correction to the verdicts. The registrar did as he was instructed.

CASE FILE FOR RUDD

From the case file for the defence, you note that during preparation of the case, defence counsel had also spoken with Halep, who denied the conversation that Raducan claimed occurred between him and Rudd.

Instructions on file noted to have been taken from Rudd, though not signed by him, are in keeping with his evidence given at trial.

RUDD'S INSTRUCTIONS TO NEW COUNSEL

(a) Rudd instructed you that the real motive for Angst lying about their sexual encounter was not advanced at trial. The real motive was that he had agreed to take her on an all-expense paid vacation to Cancun to get her to have sex with him. After the sex, he told her that he could not afford to fulfill his promise and that is why she got angry and left.

He told this to defence counsel, who asked him if he had any proof of this promise, in a text message or voice note. When he said no, defence counsel told him that he had better come up with something more believable. That was when he, Rudd, then gave the motive advanced at trial.

(b) Furthermore, he is also very concerned that several other things went wrong during his trial.

According to Rudd, he is concerned that:

- nobody called his friend Halep to give evidence;

- the Judge was unfairly helping the Crown to do their work and questioning the witnesses as if he were the lawyer;
- his lawyer rejected his instructions for his defence and forced him to make up a false one;
- Crown counsel should never have mentioned her sexual assault case during his case; and
- some “*bandoolo thing go on*” with the jury because they come back so quick then changed their minds after he left the court.

Instructions:

Having thoroughly read all the documents, frame the above concerns expressed by Rudd, as grounds that could be filed in the Court of Appeal **AND** under each, opine on the way the court is likely to treat with each one.

Note:

The word count should not exceed **3,500 words**.

END OF PAPER