

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS 2023

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 1, 2023)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **ALL** 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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **QUESTION 1**

Constable Jules was dressed in uniform and on foot patrol in a busy shopping district, when he saw, from a distance, a man, dressed in a red shirt, stab another man, in the back, with a knife. The man that was stabbed was later identified as Rune.

The attacker ran away, still holding the knife, while Rune fell to the ground.

Constable Jules immediately chased after the attacker and lost sight of him when he, the attacker, ran around a corner.

As Constable Jules went around the corner, he saw a man in a red shirt who fit the description of the attacker, running in the direction of a taxi stand. That man was later identified as Fritz.

Constable Jules shouted, "Police, stop!" in Fritz's direction. However, Fritz continued to run in the direction of the taxi stand. Constable Jules chased and threw himself at Fritz from behind, pushed him to the ground and sat on him.

While Constable Jules was on top of Fritz, whose face was buried in the ground, Fritz elbowed him in the face with his right arm. Constable Jules removed his baton and struck Fritz several times on his right arm. Constable Jules handcuffed Fritz's hands behind his back. While Fritz was still lying on the ground, Constable Jules searched him and found and removed a cell phone from his pocket. However, no knife was found.

Constable Jules dragged Fritz up from the ground to face him and asked, "Hey bwoy, what you do with the knife you use to stab the man?" Although he was in pain, Fritz answered "You've got the wrong one, officer."

Constable Jules immediately took Fritz to the police station, which was located five minutes away 'by foot'.

Constable Jules searched the cell phone at the station and found a picture of Fritz posing with a knife. He showed the picture to Fritz, who remained silent.

Fritz was charged with wounding with intent and resisting arrest. Upon caution, he declined to respond. Fritz was subsequently taken for medical treatment where it was determined that his right arm was broken.

A few days later, the police received a CCTV recording of the incident which showed that the attacker was not Fritz, but a man, who on the day, was dressed similarly to Fritz. The police decided not to proceed with the charge of wounding with intent.

Fritz has retained the chambers where you work part-time, to defend him. In his instructions, he explained that, before Constable Jules pulled him up from the ground, he had not seen him, and neither had he heard Constable Jules shouting because he had his earbuds in use.

He had been running in the direction of the taxi stand, not because he was running away from the incident, but because he had parked his car illegally in the taxi-bay area and did not want it to be towed.

Based on the above facts, advise Fritz on the following:

- (a) Whether the arrest of Fritz for wounding with intent was lawful.
  - (b) Whether the search of Fritz and his phone was lawful.
  - (c) Whether the Crown can sustain a charge of resisting arrest against Fritz.
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## **QUESTION 2**

Raine was charged with and convicted of burglary which she is alleged to have jointly committed, 11 years ago, along with one Ramirez.

Raine, who is now 30 years old, spent two years in pre-trial custody before being granted bail. Raine retained Staine to represent her.

Raine has faced two trials. The first trial, held in 2016, had been aborted because of prejudicial evidence from a witness for the Crown, Janus, who, in cross-examination, testified about Ramirez's previous convictions. Ramirez died from unknown causes before the second trial was held.

Raine's matter was returned to the mention list, where it spent some three years waiting to be assigned a date for trial. In early 2020, Staine suffered a heart attack, and by the end of that year, it was confirmed that based on her ill health, she would be unable to pursue Raine's case.

Raine could not retain new counsel because her financial situation had worsened. She had lost her job, due to her detention in custody, and depleted her savings.

Raine was placed on the legal aid list for counsel and waited almost two years before she was assigned new counsel, Mattias.

In January 2023, Mattias, her new counsel, made an application to stay the proceedings based on delay, but it was not successful.

In March 2023, during the second trial, at the time of arraignment, Raine did not answer the Registrar and stood silent in the dock. Mattias submitted that he too was having difficulty communicating with Raine, who, since recently, was also not responding to him. As a result, he, counsel, could not make any meaningful submissions to the court at that stage.

The judge reminded Raine that at a previous mention date, she, Raine, had addressed the court to vent her frustration about 'how long the trial was taking'. Raine looked past the judge, to the painting behind her, and remained silent. The judge, clearly irritated by Raine's behaviour, ordered the Registrar to enter a plea of 'not guilty' against Raine and proceeded with the trial.

During the Crown's case, they did not call a witness named Biggs, whose evidence had been admitted at the committal proceedings/preliminary examination stage, and whose name also appears on the back of the indictment.

Biggs' evidence was to the effect that the woman he saw running away from the scene of the crime, who is alleged to be Raine, had no resemblance to Raine.

At the first trial, the Crown had called Biggs, who gave inconsistent evidence about how the woman he saw running away from the scene, was dressed. In the witness box, when asked for an explanation for the inconsistency, he denied giving the first answer. Biggs's first answer is consistent with his statement to the police.

The defence did not apply for the Crown to call Biggs who was available, nor did they call him themselves. Apart from a character witness, no other witness was called on Raine's behalf.

Raine remained silent throughout the entire trial. She was convicted.

Raine wishes to appeal on the following grounds:

- (a) There was a breach of her right to a fair trial within a reasonable time.
- (b) The learned trial judge erred in having a plea of 'not guilty' entered against Raine and proceeding with the trial, as Raine did not consent.
- (c) Both the Crown and the defence were incompetent in their failure to call Biggs as a witness, as his evidence could have been crucial to Raine's defence.

Advise Raine.

### **QUESTION 3**

On the third day of Guido Banks' 10-day trial for arson, the judge realized that Banks had not been pleaded at the beginning of the trial.

The judge promptly asked the Registrar to plead Banks, who pleaded 'not guilty'. The trial continued. The Crown completed calling its witnesses and closed its case.

During the case for the defence, Banks gave evidence on his own behalf, stating that he was not present at the scene of the crime, but had been at a football match in the distant district of Rough Row at the time of the offence.

He claimed that, while he was still in the vicinity of the football venue, en route to his home, he had been stopped by a police officer named Constable Spice, who had warned him for speeding.

The Crown conducted a quick investigation and found Constable Spice, who denied stopping Banks on the day in question. The Crown applied to call Constable Spice in rebuttal. The defence objected to the application on the basis that Banks had previously told the police in his caution statement [as well as in his notice of alibi where applicable] that he was at the football match and not at the scene of the offence. The learned trial judge granted the Crown's application.

After 55 minutes, the jurors returned with a unanimous verdict of guilty. After the verdict was taken, the jury was discharged and the matter was set for sentence. Juror number two remained in the jury box and indicated to the judge that she wished to speak with him. The judge, who was just about to adjourn the court, told her to speak with the registrar.

The sum of her explanation to the registrar is that:

*"While in the jury room, all the jurors were arguing fiercely among themselves but could not come to a decision. After 30 minutes they decided to anonymously poll their votes. They requested and were given writing material, on which each juror recorded his vote. After counting the votes, it was confirmed that all the jurors voted 'guilty' except one. When the foreman asked who was the one, no one answered.*

*The foreman announced that he would deliver the verdict as a unanimous verdict since there was no response. She explained that she was the juror who dissented, but some of the others had gotten so angry, she did not want to reveal her identity to them and that is also why she had said nothing when the foreman delivered the verdict.*

*She was surprised that she was the only one who voted 'not guilty', because, before the vote was taken, she had the impression that other persons were of the same view. She further said her conscience could not let her leave without speaking the truth."*

The registrar immediately made a report to the judge.

On the date the matter was set for sentencing, and before passing sentence, the judge assembled both counsel and reported what the registrar had told him. He however explained that the matter 'was out of his hands'.

He proceeded to sentence Banks.

Banks wishes to appeal on the following grounds:

- (a) The late stage at which Banks was pleaded.
- (b) The Crown being permitted to call evidence in rebuttal.
- (c) Whether the jury's conduct and the trial judge's treatment of it, had made the trial unfair.

Advise Banks.

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**END OF PAPER**