

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS 2023

CRIMINAL PRACTICE AND PROCEDURE

(THURSDAY, AUGUST 10, 2023)

Instructions to Students

- (a) Time: **3 ½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Lyon and his friend, Draghon, were indicted for the offence of arson before the High/Supreme Court. They were accused of burning down the house of Tilli, a neighbour of Lyon, with whom Lyon and his family have a long-standing border dispute.

Both men, despite being advised by the trial judge against it, chose to represent themselves. The men are of the view that their defence is simple and lawyers are just 'going to complicate things'.

The trial judge instructed the men, *inter alia*, as to their right to challenge potential jurors and how to exercise the right.

At the empanelment stage both men exhausted their peremptory challenges. The panel of potential jurors was also exhausted.

The trial judge then instructed the registrar to bring persons from the streets to complete the empanelment process. The registrar complied and instructed the police to find members of the public in the nearby vicinity.

The police officers returned with five persons from which three were sworn in to complete the panel of jurors to try the matter.

Neither the Crown nor the defence had challenged any of the three additional persons. The trial judge had not given Lyon or Draghon any further instructions in relation to challenging the second set of potential jurors.

The trial proceeded with the Crown calling its witnesses.

After one of the adjournments, Draghon raised his hand and informed the trial judge that while he was being carried to court he saw one of the jurors talking to the complainant, Tilli, for about two minutes, after which they shook hands. Draghon pointed out the juror, as juror number five.

Juror number five immediately stated that he had merely asked Tilli the time and furthermore he had not realized it was Tilli, until he posed the question.

The trial judge then asked Tilli, who was present in court, if what juror number five said was true.

Tilli nodded his head in agreement.

The judge remained silent for a moment, then stated that he saw no merit in the allegations and that the juror would remain on the panel.

The trial continued and both Lyon and Draghon were convicted. Each was sentenced to seven years imprisonment.

After the jury was discharged, but before they were dispersed, two jurors hesitantly handed a note to the registrar which they told her was for the judge. The registrar carried the note from two jurors to the judge. In the note, the jurors said they did not agree with the verdict, but that they were bullied by other jurors into agreeing with them.

The judge said that he could do nothing about it because the case was finished. He, however, instructed the registrar to inform counsel of the note.

It was also discovered that the extra persons procured during the empanelment, were not from the vicinity of the court, but that the police officers had simply called persons who worked in the court itself to serve as jurors.

You have been granted a legal aid assignment to advise Lyon and Draghon whether:

- (i) the last three jurors had been properly empaneled to serve in their trial;
- (ii) the judge had properly addressed Draghon's report about the conduct of Tilli and Juror number five; and
- (iii) in light of the note from the two jurors, their conviction should be quashed.

Advise them.

QUESTION 2

Carni was charged, tried and convicted of wounding with intent arising out of an incident involving a bartender, Valanti, at a nightclub. The Crown's case against him is that he became

violently angry when Valanti accused him of pinching her on her bottom. A quarrel ensued between both of them during which Carni punched her several times in the face, resulting in the injury.

Carni's defence is one of alibi. He insisted that he was not present on the night in question and that Valanti was simply confusing with him someone else. He explains that he is one of a group of young men who frequents the bar and is in the habit of playing pranks on the bartenders.

During its case, the Crown forgot to ask Valanti to identify Carni in court as the man she described as her attacker.

At the end of the case for the prosecution, and in the absence of the jury, defence counsel informed the trial judge that she wished to make a no-case submission. The trial judge asked if it was in relation to the Crown's failure to ask Valanti to identify Carni in court, and defence counsel answered, "Yes."

Before she could go any further, the trial judge said,

*"Forget it, do you see how overwhelming the evidence is? Case to answer.
Madam Crown, please recall the witness to identify the accused."*

The Crown did as instructed, and Valanti identified Carni as her attacker.

The trial continued and ended in Carni's conviction. He was sentenced to six years' imprisonment.

After his conviction, he immediately instructed new counsel to file an appeal. Counsel did as instructed.

Shortly thereafter, during a conversation with his cellmate, the latter convinced Carni that the process of appeal could take longer than his sentence, and it would better for him if he abandoned the appeal.

Without informing his counsel, Carni immediately sent a notice of abandonment to the Registry of the Court of Appeal.

A month later, he also received information that CCTV footage from the bar was uncovered and it showed very clearly that he was not the person who had attacked the bartender.

He has now retained the firm where you are employed and wishes to be advised on the following:

- (a) Whether he can withdraw the notice of abandonment.
- (b) Assuming that Carni had not filed the notice of abandonment, whether:
 - (i) the trial judge's refusal to hear his counsel's no-case submission and allowing the crown to re-open its case was correct; and
 - (ii) on appeal, he can rely on the footage from the CCTV.

Advise Carni, giving reasons.

QUESTION 3

In 2022, Sambo, a taxi operator, was convicted and sentenced on four counts of rape in the High/Supreme Court. At trial, he was represented by defence counsel, Abe.

The firm to which you are employed has since been retained to represent him on a likely appeal, and your senior has sent you to visit Sambo to record instructions from him. At that interview, he tells you the following:

"... when I told my attorney that I had no sex with the complainant at all, he said that based on the prosecution's case, my story was unbelievable and that it would be better if I said, 'she consented', as there is enough evidence to suggest that possibility.

He then asked me, 'If I was sure she did not consent'? I then said 'yes, she consented', because it appeared to me that that is what he wanted me to say.

At the end of the interview, he said that I should 'leave it to him'.

I noticed that usually when he would interview me, he would type into his computer, but he never asked me to sign anything.

During the trial, the judge allowed the complainant, a 30-year-old woman, halfway through her evidence, to continue give evidence from behind a screen, because, during her evidence, she kept crying and talking about she afraid of me. Neither myself nor my lawyer could see her from behind the screen. However, the judge and the jury [where applicable] were able to see her.

My counsel voiced his objections to the judge, but that didn't matter.

My counsel suggested to the complainant that on the four occasions she said I raped her, she had consented to the sex. She denied this suggestion.

After the prosecution finished, I gave evidence and told the court what my lawyer told me to say.

I noticed during the trial that the judge would keep disagreeing with everything my lawyer would say, and at one point he asked my lawyer 'if he went to law school at all'and laughed."

After the interview with Sambo, you contacted Abe, who sent you a copy of Sambo's written instructions dated before the trial. The instructions are in keeping with the defence as advanced at trial.

Abe stated that the instructions were not signed because Sambo cannot read and write. Sambo confirms that he cannot read but insists he can write his name.

Sambo wishes you to advise him whether:

- (i) the trial judge was correct in allowing the witness to give evidence from behind the screen;
- (ii) the trial judge's conduct in relation to his lawyer was correct; and
- (iii) his lawyer had misconducted his case in relation to his defence.

END OF PAPER