

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2024

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 6, 2024)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Bean, a plain clothes detective, parked his car and began walking to his office at the nearby police station. Bean observed a man, who was later identified as Adam, wrestling a woman's bag from her grasp and running quickly in the direction of a nearby park. Bean pursued Adam, backing him into a corner. He made a springing leap in Adam's direction and pushed him onto the ground. Adam bit down hard on Bean's left arm. Bean pulled his firearm and hit Adam in the face, causing Adam's nose to break.

Bean kneeled into Adam's side, subdued, and handcuffed him. He searched Adam and removed a cellphone. He also took custody of the bag.

Bean stood up and realized blood was running down his arm. He swore under his breath and kicked Adam, who was still lying on the ground, twice in the rib. Two of Adam's ribs were thus fractured.

Bean marched Adam immediately to the nearby police station.

At the station, Bean searched Adam's cell phone and found information evidencing a scamming fraud offence.

Bean charged Adam with a scamming fraud offence, larceny from the person, unlawful wounding, and resisting arrest. When Adam was cautioned, he remained silent.

Adam has retained you to represent him. He is of the view that his arrest was unlawful and therefore any charge against him should be dropped. Furthermore, he only resisted the arrest because he did not know that it was a police officer who was arresting him. He also does not understand why the officer charged him with a scamming fraud offence when he did not see him in the act of scamming.

Advise Adam on the lawfulness of the:

- (a) arrest;
- (b) charge of resisting arrest; and
- (c) charge relating to a scamming fraud offence.

The facts below pertain to both questions (2) and (3)

Burner Brown and Smokey Ross were convicted of the offence of arson.

The Crown's case was that at about 10 p.m. on February 14, 2014, both men used gasoline to set fire to the home of the Creeds, burning the entire structure to the ground.

The men faced two trials concerning the offence. At the first trial, which ended in a hung jury, both Burner Brown and Smokey Ross had given sworn evidence. The matter was placed on the mention list to be relisted for a second trial.

At the second trial, Burner Brown was represented by Mr Tanner, who was assigned via legal aid, and Smokey Ross was represented by Miss Rykes, whom he had retained.

QUESTION 2

On the second day of trial, before the Crown began to lead evidence, Burner Brown began to complain to the judge that *"the legal aid lawyer nuh good"*. Before he could complete what he was saying, the judge interrupted him. He told Burner Brown that if he did not want the "the legal aid lawyer", he had the option either to pay for the lawyer he wanted, or he could defend himself in person. Burner Brown hissed his teeth loudly and muttered something from which only, *"...Babylon system is a vampire"*, could be heard. The judge ordered that Burner Brown be taken from the courtroom *"until he learns to behave himself"*.

The evidence (in examination-in-chief and cross-examination) of three witnesses, one of whom was the main witness for the Crown, was taken in his absence. At about 4 p.m., before ending court, the judge ordered Burner Brown to be released from custody.

On the third day, Burner Brown, who was on bail, did not appear for trial. The judge asked Mr Tanner if he knew where his client was. Mr Tanner stated that he had not heard from him directly, but he had been made to understand that he had absconded. The judge paused for a moment

then asked Mr Tanner if he would be willing and able to continue in Burner Brown's absence. Mr Tanner answered in the affirmative.

The trial for both accused men continued.

In his defence, Smokey Ross again gave sworn evidence.

Burner Brown surrendered himself to the police after the verdict but before the sentencing. He claims that at the time he absconded, "the legal aid lawyer", had taken no instructions from him. He further states that the reason he had told the judge "... *the legal aid lawyer nuh good*", is that he wanted him to plead guilty without even hearing his side of the story.

Mr Tanner denies Burner Brown's allegations. He states that he did take instructions from Burner Brown, however, he did not take them in writing. Tanner states that upon reading the transcript of the first trial, and talking to Burner Brown, he was of the opinion that his instructions were clearly captured in the transcript.

Advise Burner Brown on the following:

- (a) whether the learned trial judge had lawfully excluded him from his trial;
- (b) whether the learned trial judge had properly exercised his discretion to continue the trial after Burner Brown had absconded; and
- (c) whether Mr Tanner's management of the case for the defence had afforded Burner Brown a fair trial.

QUESTION 3

During the summation, the forewoman asked the registrar for an opportunity to speak with the judge. The registrar informed the judge of the forewoman's request and was directed by him (the judge), to bring the forewoman to his chambers.

In chambers, the forewoman informed the trial judge that, juror number three, was offering each of the other jury members a bribe to find in favour of the accused man, Smokey Ross. She stated

that each juror including herself had rejected the offer and had told juror number three that they were only interested in doing justice in the case. The judge listened intently to her story. After she was finished, he summoned all three counsel to his chambers.

In their presence, he asked the forewoman to repeat what she had told him, and she complied. The judge then asked the counsel how they wished to proceed. All counsel agreed that the judge should proceed with the trial. However, he should give the jury members a stern warning/reminder that their verdict must be based solely on their consciences and the evidence heard in court.

After the counsel and the forewoman withdrew, the judge summoned juror number three, and questioned him about the allegations. The juror denied everything. The judge gave him a very stern warning about his alleged behaviour, urging him to desist from any activity that could cause him to *“end up like the accused men in the dock”*. Finally, the judge reminded him of his oath, and the need to act accordingly.

A stenographer was present for all the meetings in the judge’s chambers.

Upon returning to the court, as had been agreed in chambers, the judge gave the jury a warning/reminder as to their oath and responsibility.

The jury spent three hours deliberating and returned with a unanimous verdict of guilty in respect of both men.

Advise Burner Brown and Smokey Ross on whether the judge had correctly addressed the allegation of juror misconduct in relation to:

- (a) the report from the jury forewoman; and
- (b) juror number three.

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