



COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL
BAR FINAL EXAMINATIONS – PART II
CRIMINAL LITIGATION

TUESDAY, MAY 8, 2009
HOURS

TIME: 3

INSTRUCTIONS

THIS PAPER IS DIVIDED INTO 2 SECTIONS AND 2 ANSWER BOOKLETS ARE PROVIDED.

QUESTIONS 1 AND 4 ARE COMPULSORY. ONE OTHER QUESTION FROM EACH SECTION SHOULD BE ATTEMPTED.

QUESTIONS FROM EACH SECTION SHOULD BE ANSWERED ON A SEPARATE ANSWER BOOKLET.

WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.

QUESTION 1 (COMPULSORY)

1A. Torkula Chukwumerije, Adakole Admola, John-Magnus Piu, Idris Idoko, Theophilus Abubakar and Amina Pulloway are notorious armed robbers within the Bwari area Council. On 5th April, **2009**, they decided to have the most violent-free operation in any supermarket within Bwari in the spirit of the Easter on 8th April, 2012, they drove into the premises of Made-in-Nigeria Supermarket located at No. 55 SCC Road, Bwari.

Amina Pulloway stood at the gate with the security men pretending to be answering phone calls but her mission was to alert others with her hidden whistle of any impending danger. Torkula and Adakole went to the Book Section of the Supermarket where they suddenly began to shout at each other and later, began to exchange blows. Everybody in the Supermarket including the Security men rushed to the Section to stop the fight. Meanwhile, John Magnus, Idris and Theophilus went into the Information Technology Section where the Cash safe was also located. Theophilus neatly opened the Safe and took out the sum of N150,000.00

John Magnus took a Camcorder, a Samsung I-Pad and a Toshiba Laptop Computer. Idris took a Palmtop Computer and a DSTV Decoder. As they made to go out, Mary, a sales clerk asked them at the check-out desk for their receipt. Theophilus smiled at her broadly and gave a wrap of N500 notes containing N50,000.00. She quickly pocketed the money and left them to pass.

All the perpetrators met at the Easy Life Cool Spot at 6.00 p.m the same day as arranged. There it was decided that all the items with market value of N2.5million be sold Chief Maza Maza at the cost of N500,000.00 if he could pay cash. The items were taken to Chief Maza Maza's Shop at No. 22 Law School Road, Bwari and he paid N500,000.00 each. the money was shared by the six in equal proportion and after consuming some gin, they bade each other good night. On his way home at Ushafa, Theophilus saw a 2012 model Toyota Camry packed by the road side with its engine running and the driver easing himself by the other side. He entered the car and drove off.

The police eventually arrested the six men, Chief Maza Maza and Mary. The Attorney-General of the Federal has decided to prosecute them.

Draft the Charges.

THE LAW

PENAL CODE ACT

SECTION 286(1)

Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to take it is said to commit theft.

SECTION 287 – PENAL CODE ACT

Whoever commits theft shall be punished with imprisonment for a term which may extend to five years or a fine or with both.

PENAL CODE ACT

SECTION 97(1)

Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall where no express provision is made in the Penal Code for the punishment of such conspiracy be punished in the same manner as if he had abetted such offence.

97(2)

Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

PENAL CODE ACT

SECTION 79

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

PENAL CODE ACT

SECTION 317

Whoever dishonestly receives or retains any stolen property; knowing or having reason to believe the same to be stolen property, shall be

punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

PENAL CODE ACT

SECTION 298(1)

Whoever commits robbery shall be punished –

- a. With imprisonment which may extend to ten years and shall also be liable to fine

1B. At the close of the Prosecution's case, the defence intends to make a no case submission because the evidence of the prosecution was that the body of Mrs. Esther Shenbe could not be found and Alhaji Manda did not give evidence, although he was named in the "list of witnesses" attached to the proof of evidence.

- i Draft the address
- ii What is the possible legal effect of failure to call Alhaji Manda as a witness by the Prosecution
- iii The learned trial judge in his 25-page ruling on the no-case submission, overruled it and ordered that the defendant enter his defence. Comment on the ruling delivered by the trial judge.

QUESTION 2

Hamza Hamed and Baba Kushinga were fellow traders at Mile 12 Market Lagos. They both conspired to waylay Miss Kate Okorochoa another trader in the market other way home and rape her. On the 10th day of July 2008, they carried out their plan. After a report to the Police the next day, they were both arrested and arraigned before in Ikeja Chief Magistrate Court. The accused persons pleaded not guilty to the offence charged and the Court adjourned for the prosecution to open its case.

On the adjourned date, the prosecution brought an application for leave to amend the charge by adding one more count of assault occasioning,

grievous harm and it was granted. Without taking fresh plea of the accused persons, the trial continued. The Prosecution was about to open his case when the Counsel to the accused brought an oral application for bail on behalf of the accused person. The prosecutor object that, being an application for bail it could not be brought by way of oral application. He was overruled and the defence counsel moved the application. The trial magistrate heard the arguments of both Counsel and ruled that he would grant the bail provided they could produce credible sureties.

Since they were unable to find suitable sureties, the Counsel for both accused elected to stand as surety for them. They were subsequently released on bail.

The trial continued with the Prosecution calling three witnesses including the dovor that examined the prosecutrix and closed their case. The defence also called three witnesses after which, the accused persons made statements from the dock. When the Prosecution Counsel rose to cross examine them, the defence Counsel objected but the Magistrate overruled him and the Prosecutor cross examined them at length.

At the end of the trial the accused persons were convicted and each sentered to fourteen years imprisonment without the option of fine. Their Counsel has indicted his intention to appeal against their convictions and sentences.

Answer the following questions with legal authorities where necessary:

- i Was the Court right in not taking fresh plea on the new charge? What is the procedure after amendment of a charge?
- ii Assuming you were the Prosecutor in this case, would you have objected to the oral Bail Application made by defence? Give reasons.
- iii As Counsel to the accused person would you have stood as surety for them? Why?

- iv Was the Magistrate right in overruling the objection of the defence Counsel and allowing the Prosecution to cross examine the accused persons? Explain briefly.
- v Assuming you are the Counsel for the defence, in which Court will you file your notice of Appeal?
 - a. Draft a Notice of Appeal
 - b. Within how many days must it be filed?
 - c. Mention three grounds of Appeal to be argued at the Court.

QUESTION 3

At the trial of Katanko for the murder of Mrs. Oxblood at the High Court Kano, the Investigating Police Officer (IPO) gave the following evidence under examination-in-chief by Prosecuting Counsel.

Question 1: You are Inspector Sule Banda of Sabongari police Station in the Kano Police Command with Force No. 12468.

Answer: Yes

Question 2: You were at Curtis Bar run by Mrs. Oxblood (the deceased) on 20th April, 2011.

Counsel for

Defendant: My Lord, I object to that question

Judge: Objection overruled. There is no dispute about the question. I direct the witness to answer the question.

Witness

Answer: Yes sir.

Question 3: In what condition did you find Mrs. Oxblood?

Answer: In the pool of her own blood.

Question 4: What did you do thereafter?

Answer: I interrogated the Bar man Mr. Godwin Saviour. He told me that he was told that it was Mr. Katanko, a notorious thug in the neighbourhood who engaged Mrs. Oxblood in an argument when he refused to pay for his drinks and hit her on the head with a bottle of beer.

Question 5: Where is Mr. Saviour now?

Answer: I dont know sir

Answer the following questions with the aid of relevant authorities:

- a. What is the nature of Question (1) above? Is it allowed in examination-in-chief?
- b. What is the possible ground for objection of Counsel to the defendant to Question (2)?
- c. Was the Learned Trial Judge entitled to direct the Witness to answer question (2)? Give reason(s).
- d. What question(s) would you have asked before Question (3)
- e. The answer of the witness to Question 4 is in the nature of what? Is it admissible?

3b. The following counter affidavit in opposition to a bail application filed in the case of THE STATE VS. ALARAPE UGOCHI has been passed on the you by the IP.P for necessary vetting. As Senior State Counsel, vet and if thought fit, re-draft.

**IN THE FEDERAL HIGH COURT
IN THE JUDICIAL DIVISION OF ABUJA
SITTING AT ABUJA**

CHARGE NO.....

ALARAPE
UGOCHI.....
ACCUSED

VERSUS

ATTORNEY – GENERAL
..... PROSECUTOR

AFFIDAVIT IN OPPOSITION

1. I am the Officer posted to the Nnamdi Azikiwe International Airport on 10th March, 2012 as NDLEA Officer
2. I live at No. 23, Nnamdi Azikiwe boulevard, Gwarinpa and as a Christian, I know everything about this case.
3. The affidavit, the motion all the documents presented by the applicant area II lies because there is no single truth in them. I personally arrested the accused.
4. That I did all the necessary narcotic tests and none of them proved negative
5. If the accused person is granted bail, he will jump bail because the punishment for the offence is 25 years which is very high.
6. That when the accused stated in Paragraph 5 of his affidavit, that he is sick, he is lying because when I took him to the hospital, the Doctor looked at him, smiled at him and said that he was very alright.
7. That the Doctor even gave us the result of the test conducted which show that the accused is very well.
8. That I have attached the Doctor's Report for your perusal.
9. That even if the accused is sick, we can take care of him because we have a working understanding with the National Hospital for the Specialists to come and treat our detainees and we can rush emergencies to them
10. The Memo of Understanding between the NDLEA and National Hospital Abuja is enclosed here for your information.

11. That everything I have stated here is to the best of my knowledge and I have the consent of my employers, and that of the Attorney-General of the Federation to swear to these facts.

OATH TAKEN

The Swearing is done before me
this.....day.....

COMMISSIONER OF OATH

1. PLEASE USE ANOTHER ANSWER BOOKLET FOR THIS SECTION
2. QUESTION 4 IS COMPULSORY
3. ONE OTHER QUESTION FROM THIS SECTION SHOULD BE ATTEMPTED

QUESTION 4 (COMPULSORY)

(A) Mohammed Dogo was arraigned before Jos High Court for the offence of culpable homicide punishable with death. When the charge was read to him and he was asked whether he understood it, he said, he did but that he did not commit the offence but was away to Abuja for submission of an application at the Federal Civil Service Commission on the fateful day. This explanation was not investigated by the Police. A search was conducted on the accused's house and forged international passport of various countries were recovered. Furthermore, computers belonging to the Federal Ministry of Information were also retrieved from his house. When he was interrogated, Mohammed could not explain how he came about these items.

After the counsel for the accused closed his defence, the prosecutor, a State Counsel rose to address the court. The defence counsel objected that he had no right to address the court first. The court sustained the objection and the defence counsel addressed the court. The prosecutor then rose to reply. The trial judge refused to allow him, noting that he had no right of reply.

The accused was found guilty of the offence and was sentenced to life imprisonment because he was a first offender. In addition, he was to be given ten strokes of the cane.

With judicial and statutory authorities, answer the following questions: -

FULL ANSWERS ON WWW.ISOCHUKWU.COM