Faculty of Shariah and Law
Semester II, 2022/2023 Academic Session

Final Examination Question Paper

Course Code : LB4304
Course Name : Criminal Procedure II
Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)
Time : 3 hours

Reference allowed:

Criminal Procedure Code 1951 (Cap.7)

Notes:
1. Answer any **four (4)** of the following questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

بسم الله الرحمن الرحيم

QUESTION 1 (15 Marks)

Ahmad Delwar, a Bangladeshi national, is not conversant in Bahasa Melayu and English language. He is charged at the Magistrate Court in Bandar Seri Begawan for voluntarily causing hurt under section 323 of the Brunei Penal Code (Cap. 22) against his co-worker, a fellow Bangladeshi national at their hostel in Kampung Kiarong.

Give a detailed account of how the Magistrate should take Ahmad Delwar's plea and proceed with his trial in the light of his language barrier, by referring to the provisions of the Brunei Criminal Procedure Code (Cap. 7) and decided cases.

QUESTION 2 (15 Marks)

Ismail is a third year student from the Faculty of Usuluddin at the Sultan Sharif Ali Islamic University. According to Ismail, his uncle was arrested on 20/10/2018 for voluntarily causing grievous hurt by a dangerous weapon, to wit, a knife punishable under section 326 of the Brunei Darussalam Penal Code. Ismail's uncle was consequently found guilty. Ismail alleged that in the process of delivering the judgment, his uncle was in a state of confusion and seems not to have understood the whole process involved in terms of the mode of delivering the said judgment.

Advise Ismail's uncle.

QUESTION 3 (15 Marks)

"The Attorney General has the discretion to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim Court/Shariah Court, or proceedings before a Court Martial. In the exercise of

this power the Attorney General shall not be subject to the direction or control of any other person or authority".

Article 81(3) of the Brunei Darussalam Constitution

Critically examine the above statement. Support your answer with relevant provisions of the Brunei Darussalam Criminal Procedure Code (Cap. 7) and case law.

QUESTION 4 (15 Marks)

A "sentence according to law" means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles." (As per Mohamad Azmi J in the case of *PP* v *Jafa bin Daud* [1981] 1 MLJ 315).

Discuss the above observation in the light of the judge's discretion to pass sentence.

QUESTION 5 (15 Marks)

(a) Peter Chong strikes James Lim on the head with a stick, causing a fracture of the skull. Peter Chong is tried before a Magistrate Court on a charge under section 325 of the Brunei Darussalam Penal Code (Cap. 22). The Magistrate Court allows the compounding of the offence by James Lim and Peter Chong is accordingly acquitted under section 320 of the Brunei Darussalam Criminal Procedure Code. James Lim subsequently died of an injury caused by Peter Chong, and therefore Peter Chong is placed on trial before the High Court for an offence under section 304 of the Brunei Darussalam Penal Code. Peter Chong contends that the trial cannot proceed in view of the previous acquittal. Will Peter Chong succeed?

(5 Marks)

(b) Henry Lau has been acquitted of a charge of rape under section 376 of the Brunei Penal Code (Cap. 22) at the High Court in the year 2020. However, instead of appealing against the order of acquittal, the prosecution decided to prefer the same charge against Henry Lau in the same court.

Advise Henry Lau.

(10 Marks)

QUESTION 6 (15 Marks)

Discuss the concepts of appeal and revision in preventing a miscarriage of justice in the context of the Bruneian criminal justice system. Support your answer with relevant provisions of the Brunei Darussalam Criminal Procedure Code and case law.

بالتوفيق والنجاح