



جامعة السلطان الشريف علي الإسلامية
UNIVERSITI ISLAM SULTAN SHARIF ALI
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

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.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

QUESTION 1 (15 Marks)

- (a) Raymond Tan, is unrepresented. He is produced before the High Court in Bandar Seri Begawan charged for murdering his neighbour under section 302 of the Brunei Darussalam Penal Code. He wishes to plead guilty to the charge preferred against him in Court.

Explain the correct procedure of recording Raymond Tan's plea of guilty. Support your answer with relevant provisions of the Brunei Darussalam Criminal Procedure Code and case law.

(7.5 Marks)

- (b) James Wong was charged with the offence of murder in the High Court. He pleaded guilty to the charge and admitted the facts given by the prosecution and was found guilty. Upon an application by the learned Deputy Public Prosecutor, the Court fixed another date for sentencing. On the date of sentencing, James Wong wants to withdraw his plea of guilty.

Advise James Wong.

(7.5 Marks)

QUESTION 2 (15 Marks)

"A judge is functus officio after a sentence is passed and unless it is a clerical error which may be rectified, she cannot add or alter her judgment". (As per the decision of the Court in *Azizan bin Saad v PP* [2000].6 MLJ 134 at 138)

Discuss.

QUESTION 3 (15 Marks)

“The Attorney General shall be the Public Prosecutor and shall have the general direction and control of criminal prosecutions and proceedings under this Code or under any other written law”.

Subsection 374(1) of the Brunei Darussalam Criminal Procedure Code.

With reference to the relevant provisions of the law and decided cases, discuss the key words “control and direction” and the powers of the Public Prosecutor to institute, conduct and discontinue any proceeding for an offence.

QUESTION 4 (15 Marks)

- (a) Mamadou Diof, a foreign national from Senegal, is not well versed in Bahasa Malaysia and English language. He is charged in the High Court with murder. Give a detailed account of how our High Court would proceed with the trial in light of the language barrier, by reference to illustrations of cases in other trials in which similar problems have been overcome by our Court.

(7.5 Marks)

- (b) John Lim was charged in the High Court with murder, punishable under section 302 of the Brunei Darussalam Penal Code. On the day of the trial, when the charge was read and explained to Lim, he suddenly burst into laughter and told the Court that he wished to plead guilty to the charge. John Lim’s defence counsel informed the court that he had reasons to believe that Lim was not fit to stand trial and applied for Lim to be sent for mental observation pursuant to section 315 of the Brunei Darussalam Criminal Procedure Code.

If you were the High Court Judge, how would you deal with the issue of John Lim's fitness to plead?

(7.5 Marks)

QUESTION 5 (15 Marks)

- (a) Ibrahim is charged with theft and housebreaking with the intent to steal. Ibrahim entered a guilty plea, which the presiding officer accepted and recorded. Explain to Ibrahim what the procedure is regarding sentencing.

(5 Marks)

- (b) Jonathan Chong is a 37-year-old man who works as a plumber with no fixed income and has three school-going children. Two charges were proffered against him under section 427 of the Brunei Darussalam Penal Code for damaging two cars belonging to two different individuals. Jonathan Chong had used a long iron drain scoop to wreck damage to the cars. Jonathan Chong pleaded guilty to the two charges in the Magistrates' Court and was sentenced to a fine of B\$2000 and 6 months' imprisonment if the fine was not paid for the first charge. In respect of the second charge, he was sentenced to a fine of B\$2500 and 10 months' imprisonment if the amount is defaulted. In mitigation, Jonathan Chong had pleaded that he had no fixed income and therefore would not be able to pay a fine if he was sentenced.

Evaluate whether the sentences imposed by the Magistrate are manifestly excessive.

(10 Marks)

QUESTION 6 (15 Marks)

Muhammad's father had come to see you on Monday 10 October 2018 to enquire if you could represent Muhammad who has been arrested on suspicion for committing the offence of rape under section 376 of the Brunei Darussalam Penal Code.

Muhammad is said to have been suspected by the police to have committed the said offence based on a police report lodged by the victim of the rape. You are only told that Muhammad was arrested at midnight on Sunday 9 October 2018. Resulting from that instruction you appeared at the Bandar Seri Begawan Magistrate's Court with the hope that Muhammad is brought to court. Muhammad was not brought to court on that day.

You had then called Inspector Rashid who is the Investigation Officer of the case involving Muhammad. The Investigation Officer told you that Muhammad would only be brought to court on Wednesday 11 October 2018 at 2.00pm. You then decided to appear before Magistrate Aida on that day. The Investigation Officer too appeared in court on that day but without Muhammad.

The Investigation Officer applied to the Magistrate for Muhammad to be detained until 20 October 2018. You attempted to submit before Magistrate Aida but she did not allow you to do so. Thereafter the Investigation Officer produced to the Magistrate a pocket note book with the mark 460 in order to support his application. He further submitted that the contents of the said notebook only shows that Muhammad ought to be detained further for further investigation into the offence of rape as well as an offence of robbery also alleged to have been committed by Muhammad. You made a request for the said notebook to be shown to you but the Investigation Officer plainly ignored your request.

Premised on the submission by the Investigation Officer, Magistrate Aida allowed Muhammad to be remanded until 15 October 2018. You then submitted

that the Magistrate ought to give reasons for the decision made by her. Once again, the Learned Magistrate ignored your submission and went on with her other matters for the day.

You are of the view that Muhammad has suffered injustice hence you wish to apply to the High Court to exercise its revisionary powers to correct the injustice caused and for it to set aside the order made by the Learned Magistrate and also for Muhammad to be released unconditionally.

Discuss the submission you would advance before the Learned Judge of the High Court in order to do so supported with relevant legal provisions and case authorities.

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