

THE INDEPENDENT EXAMINATION BOARD

GHANA SCHOOL OF LAW

SUPPLEMENTARY EXAMINATION

POSTCALL EXAMINATION

CRIMINAL PROCEDURE

24 NOVEMBER, 2016

TIME ALLOWED: THREE (3) HOURS

10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
 2. **Answer QUESTION ONE and any other THREE questions**
 3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
 4. Do not write or sign your name on the answer booklet. Only write your index number.
 5. Adhere strictly to the instructions accompanying your Answer Booklet.
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QUESTION ONE

Kofi Mensah, an unemployed 25 year-old boy, invited Augustine Opoku, an 11 year-old boy and Kwame Asare, a 19 year-old student, to plan to steal from and kill his neighbour, Richmond Nkum, who was perceived to be rich. The three held the meeting in the rented room of Kofi

Mensah. The three of them agreed to steal from and kill Richmond to cover their criminal act. Kofi Mensah was an ex-employee of Richmond Nkum and the latter could identify him even under the cover of darkness. Kwame Asare and Augustine are members of the T.C. Football Club formed by Richmond Nkum. Kofi Mensah persuaded Augustine Opoku to steal his father's gun and bring it to him for safekeeping with the purpose of using it to execute their deal. On 1st February, 2016 when Mr. Thomas Nkrumah went to church, his son Augustine Opoku, entered his room and took away his shotgun with the inscription BB47. On realising that there was no one in the house, Augustine Opoku sent the gun to Kofi Mensah to execute the deal. Kofi Mensah thanked Augustine Opoku and assured him that he could use his share of the proceeds to travel to the United Kingdom to seek greener pastures. Kofi Mensah sent for Augustine Opoku and the three agreed to carry out their activity on 2nd February, 2016 at 2am.

To ensure that Augustine Poku did not reveal their plan to his parents, Kofi Mensah informed his parents that he was seeking to gain admission for him at Amangoase Soccer Academy and the exercise would commence at 5am and that Augustine would therefore sleep with him in his rented room. The parents of Augustine Opoku acceded to Kofi Mensah's request and Augustine Opoku accompanied Kofi Mensah to his house. When they got to Kofi Mensah's house they met Kwame Asare and Sefah Okai, a notorious thief in the neighbourhood. Sefah Okai gave a toy gun to the three friends and he took the BB47 from Kofi Mensah. On entering the house of Richmond Nkum, his three dreadful bull dogs barked at them and Sefah Okai shot two of them and they died instantly. Kofi Mensah threatened the security man in the house with the toy gun and tied him with rope. Richmond peeped from his windows and mentioned the names of Kofi Mensah and Okai and invited people to come to his aid. Okai on hearing his name shot Richmond Nkum through the windows and Richmond narrowly escaped death, The pellet hit Mrs. Nkum who was then hiding behind the window. She sustained serious injuries from the gunshot but did not die.

The police on patrol duty surrounded the four people and subsequently overpowered them. They seized the guns from Kofi Mensah, Augustine Opoku and Kwame Asare, which were found to be toy guns.

Prepare a charge sheet, leveling appropriate charges against the suspects.

[40 marks]

QUESTION TWO

Charges of assault and causing harm were preferred against Alhassan Mumuni and he was arraigned before the District Magistrate Court, Tapa. Alhassan Mumuni was alleged to have assaulted one Margaret Eshun on 10th March, 2016 at Tapa Abesa within the jurisdiction of the Tapa District Court. The alleged assault and the causing harm took place at dawn and Margaret Eshun could not identify the assailant. Alhassan Mumuni was found in the bush barely one hour after the incident and was accused of having assaulted and caused harm to the victim. The prosecution called three witnesses to testify against the accused person. The accused person pleaded alibi but the police refused to investigate. The police took a confession statement from the accused person, who was illiterate, without an independent person. During the trial, the accused person, who was self-represented, informed the Court that he was told to thumbprint the witness statement without knowing its content. The trial judge refused to conduct *voire dire* and relied on the confession statement and the discredited evidence of the witnesses to call upon the accused person to open his defence. The accused person denied having committed the offence and denied knowing the contents of the witness statement. The trial Magistrate inquired from the accused person whether he thumb-printed the confession statement and he responded in the affirmative, but denied knowing its content. He also denied the contents of the charge cautioned statement which was incriminatory.

The trial Magistrate in his judgement stated that he believed that both witness statements and the charge cautioned statement were voluntarily made by the accused and convicted him solely on that evidence. The accused person, who was a first offender, was sentenced to three years imprisonment.

Alhassan Mumuni has approached you as a criminal lawyer to file an appeal on his behalf. Prepare a notice of appeal to the proper appellate court and specify the appropriate grounds of appeal.

[20 marks]

QUESTION THREE

On 4th April, 2015, Regina Achiaah and her husband Richard Quaye were charged with the offences of Conspiracy to commit murder contrary to sections 23 and 46 of the Criminal Offences Act 29/1960 and murder contrary to section 46 of Act 29/ 1960. The brief facts of the case were that Regina Achiaah and her husband Richard Quaye fought with their neighbour, Kwasi Oteng, now deceased. The couple used canes to assault Kwasi Oteng on 31st March, 2015 at Ashiaman in H/No AS 45 where the victim and the accused persons were tenants. The accused persons alleged that the victim purported to poison them and a Good Samaritan who found him pouring DDT into their barrel in which they store their drinking water informed them. They confronted the victim but he denied the allegation. The couple then poured away the contaminated water from the barrel and the victim rained insults on them. The couple became annoyed and whipped the victim with a cane. The victim who sustained bruises on his body did not attend hospital but died three days after the assault on him.

The District Court has refused to admit the accused persons to bail. The Magistrate ruled that it lacked jurisdiction to grant bail in murder cases. As a young lawyer who has been engaged by the family of the accused persons to secure bail for them, discuss the appropriate court to apply for bail, setting out in detail the grounds upon which bail may be granted to the couple. Further explain to the family of the couple persons who are eligible to stand surety and the consequences should the accused persons abscond.

QUESTION FOUR

Timothy Nnum, aged 15 years and Jonathan Anu, aged 14 years were alleged to have assaulted and caused serious bodily injuries to Madam Aba Akata on 1st January 2015 at Amangoase, a suburb of Ada. The two boys were arrested by the police and were charged after

the police had conducted their fullest independent investigation into the matter. The police Criminal Investigations Department has written to the Attorney -General's office for advice and the letter has been referred to you as an Assistant State Attorney to respond to the following questions:

- (a) Which court is seised with jurisdiction to entertain the matter?
- (b) Describe in detail the composition of the court and the procedure of the trial court.
- (c) The effect of the trial if the accused persons were not tried within six months after their first appearance in court.
- (d) The sentences that may be imposed on them upon conviction.
- (e) What is a Social Enquiry Report and what is its importance?

[20 marks]

QUESTION FIVE

On 4th June, 2011, Madam Yaa Alata was charged with dishonestly receiving property, contrary to section 146 of the Criminal Offences Act, 1960 (Act 29) and stealing, contrary to section 124 of Act 29. Kofi Alata was also charged with stealing the same subject matter, contrary to section 124 of the Criminal Offences Act, 1960 (Act 29). The facts of the case were that: on 1st June 2011, Kofi Alata went to the shop of Special Care and took away four cartons of tomato paste. A carton of tomato paste costs Fifty Ghana Cedis. Kofi Alata went and sold a carton of tomato paste to Madam Yaa Alata on credit for Fifty-one Ghana Cedis. Madam Yaa Alata, who operates a restaurant, bought the four cartons of tomato paste from Kofi Alata at the same price of Fifty-one Ghana Cedis on credit. Special Care detected a shortage in the tomato paste and went on its CCTV and found that Kofi Alata, who was an employee, stole the goods from the shop under the pretext that they were bought by a trader and he assisted the trader to cart the goods from the shop to his car. A complaint was lodged against Kofi Alata by his employer and he was arrested by the police. He mentioned Yaa Alata as the receiver of the goods. Both were arrested

by the police. Yaa Alata denied the offence and explained that she has been buying from Kofi Alata who informed her that he sells tomato paste on a small scale at Alata Market. The accused persons were arraigned before the District Court. Kofi Alata pleaded "guilty" to the offence. Yaa Alata pleaded "guilty with explanation" to the offence of dishonestly receiving and "not guilty" to the offence of stealing.

(1) Discuss how the Magistrate should handle the case of Kofi Alata who pleaded guilty.

(2) Discuss how the Magistrate should handle the case of Yaa Alata who pleaded guilty with explanation to the offence of dishonestly receiving and not guilty to the offence of stealing.

(3) Describe the procedure from plea of not guilty to the close of the prosecution's case and the rights available to Yaa Alata after the close of the prosecution's case.

[20 marks]

QUESTION SIX

The accused and the complainant were neighbours belonging to different political parties. The accused hired thugs to destroy the uncompleted building of the complainant. The accused was charged with causing unlawful damage to a building. During the trial, the only evidence led by the prosecution was that the accused provoked the complainant by insulting him and, in retaliation, the accused grabbed the son of the complainant and beat him mercilessly. A submission of no case by counsel for the accused was dismissed. When the accused opened his defence, he rather testified that he broke the fence wall of the complainant when he learned that he had beaten his (the accused's) son. The trial judge relied on the case put forward by the accused and convicted him of the offence of causing damage and assault.

- i. Comment on the ruling on the submission of no case.
- ii. Was the judge right in convicting the accused on the basis of the evidence before him?
Give reasons for your answer.

[20 marks]