



**NIGERIAN LAW SCHOOL**  
**BWARI - ABUJA**  
**BAR EXAMINATION-PART II FINAL**  
**CRIMINAL LITIGATION**

**MONDAY 19TH AUGUST, 2019**

**TIME ALLOWED: 3 HOURS**

**INSTRUCTIONS:**

**THIS PAPER IS DIVIDED INTO TWO SECTIONS. TWO ANSWER BOOKLETS ARE PROVIDED. QUESTIONS FROM EACH SECTION SHOULD BE ANSWERED ON A SEPARATE ANSWER BOOKLET. QUESTIONS 1 AND 4 ARE COMPULSORY. ONE OTHER QUESTION FROM EACH SECTION SHOULD BE ATTEMPTED.**

**WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.**

**SECTION A**

**QUESTION 1 (COMPULSORY)**

Okpororo Vrendo, Tamuno Preye and Dike Nne are a gang of notorious kidnappers who had made the Lagos-Ibadan Expressway a dreaded route for motorists and commuters. On August 2, 2019 at about 8.00 a.m, the trio acting on information mounted a road block at Itire Community in Oyo State end of the Lagos-Ibadan Expressway. They wore Mobile Police uniform and carried AK 47 rifles and ammunition. At 8.15 a.m., a G-Wagon carrying Mrs. Benita Otodo the Managing Director of First Class Cosmetics Limited and her friend Iyabo Ekaro who were travelling to Lagos, met the road block. Suspecting that it may be a road block by criminals, the driver, Ita Udo attempted a U-turn. Okpororo and his gang opened fire on them killing the driver and Mrs. Benita Otodo instantly. The gang took Iyabo Ekaro into the bush and drove into Lagos.

At Oshodi in Lagos, they snatched a Toyota Corolla Car with Registration Number LKD 221 VI at gun point from Uche Johnson. They also collected his i-phone worth #500,000.00 and his Rolex wrist watch worth N1,000,000.00.

They took Iyabo to their hideout in Ajegunle where the gang leader Okpororo raped her while the others watched. Iyabo was released after a ransom of #50,000,000.00 was paid by her husband. In the course of investigation, the Police discovered that the gang were responsible for the Arrow Bank robbery in Ibadan in December 2018 where they stole N3,000,000.00. All the members of the gang have been arrested.

The Honourable Attorney-General of Oyo State has instructed you, P.O Mbang, Esq a Senior State Counsel to draft the charges. Draft the charges.

The Law

### **Criminal Code Law**

Section 516: Any person who conspires with another to commit any felony or do any act in any part of the world which if done in Nigeria would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person is convicted of the felony in question is liable is less than imprisonment then to such lesser punishment.

109: Any person who, not being a person serving in the Armed nor a member of the Police Force, and with intent that he may be taken to be such a person or member as aforesaid:

(a) wear any part of the uniform of; or

(b) Wear any part resembling any part of the uniform of; a person serving

Armed Forces of Nigeria, or a member of the Police Force is guilty of a

misdemeanour and is liable to imprisonment for one year.

319(1): Subject to the provision of this section any person who commits the offence of murder shall be sentenced to death.

364: Any person who:

(1) unlawfully imprisons any person and takes him out of Nigeria without his consent; or

(2) unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovery to any other person the place where he is imprisoned, or in such a manner prevent any person entitled to have access to him from discovery the the place where he is imprisoned; is guilty of a felony and is liable to imprisonment for ten years.

Section 390: Any person who steals anything capable of being stolen is guilty felony and is liable, if no other punishment is provided to imprisonment for three years.

Section 358: Any person who commits the offence of rape is liable to imprisonment for life with or without caning

### **Robbery and Firearms (Special Provisions) Act CAP R11 LFN 2004**

**SECTION 1** (1) Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than twenty-one years.

(2) If:

(a) any offender mentioned in subsection ( 1 ) of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or

(b) at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to death.<sup>3.</sup>

(11) "Firearms" includes any canon, gun, rifle, carbine, machine-gun, cap gun, flint-lock gun, revolver, pistol, explosive or ammunition or other firearm, whether whole or in detached pieces;

(3) "Robbery" means stealing anything and, at or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained;

### **QUESTION 1B**

(i) Assuming the defendants are objecting to the jurisdiction of the High Court of Oyo State to try them and on the date of the hearing application, the Prison Authorities fail to bring the defendants to court, as Counsel to the defendants highlight the possible objection you raise.

(ii) Would your answer in 1(B) (i) above be different if the defendant were being tried at the High Court of the Federal Capital Territory, Abuja.

### **QUESTION 2**

On the 2nd day of June, 2019, Alhaji Kabiru Olabode was kidnapped at Jere Junction on his way to Kaduna by a gang of kidnappers. He was whisked through the forest to an unknown destination. After one week, the kidnappers contacted his wife Mrs. Fatuna Olabode and demanded for the sum of N25,000,000.00 as ransom for his release.

Two weeks after his kidnap, two of the gang members 'Razor' and 'Scorpion' were arrested at Gurara Water Falls, Kaduna where they had gone to pick up the ransom.

They confessed to the kidnap of Alhaji Olabode and stated further that Okechukwu Pascal ( aka fearless) was their leader Okechukwu was subsequently arrested at a near Zuma Rock, Suleja, Niger State.

Since the arrest and detention of Okechukwu Pascal, he has been in Police and the Police have refused to grant him bail because of the gravity of the offence. Okechukwu is diagnosed with sickle cell anaemia and tuberculosis and his health is deteriorating due to the poor condition of the Police cell.

The father of Okechukwu, Mr. John Pascal has come to your Office to brief you.

**Answer the following questions:**

(a) You have decided to file an application for bail before the Kaduna State High Court. Draft the application for the bail without the supporting affidavit.

(b) Assuming the application is refused by the High Court, State the procedural steps you will take to secure Pascal's bail.

(c) Comment on the effect or otherwise of the confessional statements of Razor and Scorpion on Okechukwu as their leader

(d) Assuming in the course of the trial. Scorpion and Razor denied making the Statement, what should the court do?

(e) Assuming Scorpion and Razor admitted making the statement but allege that it was made under duress, comment on what the Court should do.

(f) Assuming during the trial. the Attorney-General of entered a

'nolle prosequi' in favour of Okechukwu but the Judge disregarded it on the

ground that the Attorney-General's action is not in the interest of the public.

Comment on the propriety of the Court's refusal of the 'nolle prosequi

(g) Assuming your client, Okechukwu has requested you to depose to the affidavit in support of his bail application, explain why you should or should not depose to the affidavit.

(h) It appears that Okechukwu is relying on ill-health for his bail application, draft only 2 (two) paragraphs as they would appear in your affidavit, showing that he is suffering from the ailments he is complaining of.

### **QUESTION 3**

During the end-of-the-year party of the students of combined Biological Sciences, Enugu State University of Science and Technology at Libra Hotel, Agbani, there was a free for all fight between two rival cult groups: Black Dogs and Red Pigs.

Miss Saucy Shiny who lived in a hostel opposite the hotel was attacked in her room by two of the cult boys, Stone and Hotman. She was raped and her Samsung Galaxy A20 was stolen from her. Following a report by Shiny at the Agbani Divisional Police station, Inspector Antonio was detailed to handle the matter. Because it was a Saturday, he went to Mallam Dogo Sule, a Justice of the Peace, who promptly issued a warrant for the arrest of the suspects. During her interview at a restaurant opposite the Police Station, Shiny informed the police that she was able to recognise one of her assailants as her ex-boyfriend through his voice. The suspects were arrested in a Palm wine Joint along Agbani Road, and were taken to the Police station in handcuffs. During their interview in the DPO's office, Hotman told the police that on the night of the incident, he was in Abakaliki attending a meeting of Eastern Youths Vanguard held at Abakaliki Hotels. Following a search of their residence in Red hostel, a wrap of substances suspected to be marijuana and a gold wrist watch were found. The IPO took the

suspects to his (IPO's) residence their arraignment. Shiny was later invited to the station to identify her ex-boyfriend in an identification parade involving 5 persons at the police counter. During the trial, Kotoma, the mother of Stone applied for his bail by a motion ex-parte, but the Court refused bail on the ground that the offence was very rampant.

**With the aid of proper statutory and judicial authorities, answer the following questions.**

- (a) Comment on the propriety or otherwise of the warrant of arrest issued by Mallam Dogo Sule.
- (b) Was the alibi of Hotman properly raised? Give reasons for your answer.
- (c) Comment on the admissibility of the items recovered from the search in view of their custody.
- (d) Comment on the mode of application for bail by Madam Kotoma
- (e) Comment on the reason given by the court for refusing the application for bail.
- (f) Comment on the identification parade carried out in this case
- (g) Comment on the propriety or otherwise of the IPO taking the suspects to his (IPO's) residence.

## **SECTION B**

**PLEASE USE ANOTHER BOOKLET FOR THIS SECTION**

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### **QUESTION 4 (COMPULSORY)**

At a trial for rape at the High Court of the Federal Capital Territory (FCT), Abuja, the following exchange took place between the prosecution counsel and his witness:

1. Counsel: Tell this honourable court your name, address and occupation.

Witness: I am Okey Mangoro. I live at Flat 10. University of Abuja Doctor's Quarters. I am a medical doctor.

2. Counsel: You are a Consultant Medical Pathologist with fifteen (15) years experience in medicine generally and ten (10) years of active investigation of rape cases and an expert witness in that regard

Defence counsel: Objection, my Lord. This question is leading and should not be allowed by this court.

Court: Objection over-ruled. Witness you may answer the question.

Witness: What my lawyer said is the truth. I have those qualifications and experience.

3. Counsel: Please cast your mind back to the 4th day of May, 2019 and tell this honourable court what happened on that day.

Witness: On 4th May, 2019, Miss Ada Bello was brought to my office at the University of Abuja Teaching Hospital by the Investigating Police Officer (IPO), Inspector Bimbo Igodo for a case of rape. I examined her and found some sperm deposits in her vagina. I invited the defendant and extracted the sperm, which I examined. The result of my investigation showed that deposits found in the prosecutrix are same as the extracts from the defendant. I wrote my report based on my findings.

4. Counsel: My Lord, I apply to tender the medical report made by Dr. Mangoro.



Defence Counsel: No objection my Lord.

Court: Medical Report is hereby admitted in evidence and marked Exhibit OM1.

Counsel: As the court pleases.

**With the aid of authorities, answer the following questions?**

- (a) (i) Identify the types of questions in questions 1 and 2 above?
- (ii) Identify the objectionable question, (if any) in (1) and (2) above give reasons for your objections.
- (iii) Assuming any of the questions in (1) and (2) are objectionable, re-draft the question(s) with a view to eliminating the ground(s) for the objection(s).
- (b)(i) What type of question is question 5
- (ii) What is its use?
- (iii) Is it allowed in the circumstances? Give reasons.
- (iv) Mention the dangers of this type of question and why it must be properly guided.
- (v) When must this type of question not be asked at all?
- (d) In five (5) numbered paragraphs, state how the medical report in the above case should be tendered
- (e) Would your answer be different if the document were a photograph taken by the witness in the course of investigation?
- (f) Considering the stated qualifications and experience of the witness  
Comment as to whether or not the trial court can ground conviction

based on his evidence alone.

## **QUESTION 5**

Bestman Onah Esq was called to the Bar in July 2018. On the 2nd of August 2018, he accompanied his principal to the High Court of the Federal Capital Territory for a matter. Bestman Onah Esq watched with amazement as the first matter on the Cause List (a Criminal matter) was called and two defendants, Alhaji Jude and Audu Kama were led into the dock with leg chain. The defendants were standing trial for culpable homicide punishable with death.

The charge was read by the Registrar of the Court in English Language and interpreted in Hausa language because the defendants could not understand English language. Alhaji Jude pleaded "not guilty tor himself and his friend. The learned trial Judge recorded their plea and called on the Prosecution to prove its case. They were unrepresented so Audu Kama pleaded with the Court to allow the bail granted to them by the police to continue and the Judge granted the application.

Alhaji Jude's application for adjournment to enable them contact a lawver was refused because according to the trial judge "equity does not aid the indolent".

The Prosecutioon called (3) three witnesses and closed their case while the defendants rested their defence on the case of the Prosecution. They were convicted and thereafter the defendants began to plead with the court to temper justice with mercy. The Court thereafter sentenced the defendants to (10) ten years Imprisonment.

**Now answer the following questions:**

- (a) Commnent on the validity of the arraignment of the defendants in this case
- (b) Comment on the propriety or otherwise of the application for bail.
- (c)Comment on the ruling of the Court on the bail application.

- (d) Comment on the lack of legal representation of the defendants in this case;
- (e) Comment on the refusal of the court to grant the application for adjournment.
- (f)/What is the implication of the defendants' decision to rest their case on that of/the prosecution? Would your answer be different if the defendants only raised a no case submission?
- (g) Comment on the plea of the defendants for the court to show mercy in sentencing. Would the Judge be right to have considered the defendant's plea?

## **QUESTION 6**

On 6th April, 2019, the town of Maraha in Gombe State was woken by the deafening sound of bomb blast from three (3) different directions.

The police station, the house of the divisional police officer and a bank were the targets. Two policemen at the police station, the D.P.O and his orderly as well as three persons at the bank were killed. After the attack, the police Anti-Bomb Squad went into investigation and initially ten (10) persons were arrested, but after questioning only four ( 4) were retained as suspects, namely: Philip Bello, Bunus Sule, Rose Peters and Ahmed Waziri.

At the police station, the suspects were told to write their statements after thoroughly beating them. Philip Bello made a confessional statement but the others did not. However Philip's confession implicated the other three.

They were then taken to Abuja for trial. They were arraigned before the Chief Magistrate Court, Kubwa on two count charge of conspiracy and terrorism.

Upon arraignment, they all pleaded not guilty except Rose Peters who stood mute. The Magistrate, however recorded not Guilty for all of them.

During the trial, Prosecution tendered the confessional statement of Philip Bello and applied that it should be applied to all the accused persons because it implicates all of them. . The defence counsel got up and objected strongly against the admissibility of the confessional statement on two grounds:

- (a) That the confessional statement was not given voluntarily.
- (b) That if admitted, the statement can only bind the maker and not all the accused persons.

The Magistrate overruled the objection and admitted the statement.

At the close of the Prosecution's case, all the accused persons (except Philip Bello) rested their cases on that of the Prosecution relying solely on the confessional statement, they were convicted and sentenced to five (5) years imprisonment with hard labour.

**Answer the following questions:**

- (a) Comment on the territorial and subject matter jurisdiction, issues in this case.
- (b) What is the legal implication of the plea of not guilty made by the accused persons?
- (c) Comment on the Magistrate's reaction to the muteness of Rose Peters during arraignment.
- (d) Comment on the two grounds raised by the defence counsel in his objection to the admissibility of the confessional statement.
- (ii) Was the Court right in overruling the objections?
- (e) Comment on the decision of the defence to rest its case on that of the prosecution in the circumstance.
- (f) Comment on the sentence imposed on the defendants.

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**BAR PART 11 AUGUST 2019**

**SECTION A**

**QUESTION 1---COMPULSORY (25 MKS)**

**IN THE HIGH COURT OF OYO STATE**

**IN THE IBADAN JUDICIAL DIVISION**

**HOLDEN AT IBADAN      ½ mk**

**CHARGE NO: HC/567 ½ mk**

**BETWEEN**

**THE STATE..... COMPLAINANT**  
**AND ½ mk**

**1. OKPORORO VRENDU**

**2. TAMUNO PREYE**

**3. DIKE NNE .....DEFENDANTS**

At the session of the High Court of Oyo State holden at Ibadan on the 19th day of August 2019, the Court is informed by the Honourable Attorney General of the State on behalf of the State that the following persons:

- OKPORORO VREND0
- TAMUNO PREYE  $\frac{1}{2}$  mark
- DIKE NE

Are charged with the following offences:

### **COUNT 1**

#### **STATEMENT OF OFFENCE**

Conspiracy contrary to Section 516 of the Criminal Code Law of Oyo State.  $\frac{1}{2}$  Mark

#### **PARTICULARS OF OFFENCE**

OKPORORO VREND0, TAMUNO PREYE and DIKE NNE On or about the 2nd day of August 2019 at Itire, Oyo state in the Ibadan Judicial Division conspired to commit a felony to wit: Kidnapping  $1\frac{1}{2}$  Mark

### **COUNT 2**

#### **STATEMENT OF OFFENCE**

Murder contrary to Section 319 (1) of the Criminal Code Law of Oyo State.  $\frac{1}{2}$  Mark

#### **PARTICULARS OF OFFENCE**

OKPORORO VREND0, TAMUNO PREYE, and DIKE NNE on the 2nd day of August 2019 at Itire, along the Lagos Ibadan expressway in the Ibadan Judicial Division murdered Mrs Benita Itodo.  $1\frac{1}{2}$  Mark

### **COUNT 3**

#### **STATEMENT OF OFFENCE**

Murder contrary to Section 319 (1) of the Criminal Code Law of Oyo State. ½ Mark

#### **PARTICULARS OF OFFENCE**

KPORORO VRENDU, TAMUNO PREYE, and DIKE NNE on the 2nd day of Aug 19 at Itire, along the Lagos Ibadan expressway in the Ibadan Judicial murdered MrItaUdo. 1½ Mark

### **COUNT 4**

#### **STATEMENT OF OFFENCE**

Armed Robbery contrary to Section 2 (a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004. ½ Mark

#### **PARTICULARS OF OFFENCE**

OKPORORO VRENDU, TAMUNO PREYE, and DIKE NNE on the 2nd day of August 2019 at Oshodi within the Judicial Division of this Court whilst armed with guns robbed Uche Johnson of his Toyota Corolla car with registration number LKD 221 VI. 1½ Mark

### **COUNT 5**

#### **STATEMENT OF OFFENCE**

Armed Robbery contrary to Section 2 (a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004. ½ Mark

#### **PARTICULARS OF OFFENCE**

OKPORORO VREND, TAMUNO, TAMUNO PREYE, and DIKE NNE on the 2nd day of August at Oshodi within the Judicial Division of this Court whilst armed with guns robbed Uche Johnson his 1-Phone worth one worth N500, 000.00 (Five Hundred Thousand Naira) only.

#### **COUNT 6**

##### **STATEMENT OF OFFENCE**

Robbery Contrary to Section 2 (a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004. **½ Mark**

##### **PARTICULARS OF OFFENCE**

OKPORORO VREND, TAMUNO PREYE, and DIKE NNE on the 2nd day of August 2019 at Oshodi within the Judicial Division of this Court whilst armed with guns robbed Uche Johnson of his Rolex wrist watch worth N1,000, 000.00 (One Million Naira) only. **1 ½ Mark**

#### **COUNT 7**

##### **STATEMENT OF OFFENCE**

Rape contrary to Section 358 of the Criminal Code Law of Oyo State. **1½ Mark**

##### **PARTICULARS OF OFFENCE**

OKPORORO VREND on the 2nd day of August 2019 at Ajegunle within the Judicial division of this Court raped Iyabo Ekaro. **1 ½ Mark**

#### **COUNT 8**

##### **STATEMENT OF OFFENCE**



Personating members of the Police Force contrary to Section 109 (a) and (b) of the Criminal Code Law of Oyo State **½ Mark**

**PARTICULARS OF OFFENCE**

**OKPORORO VREND**O, TAMUNO PREYE, and DIKE NNE on the 2nd day of August at Itire, along the Lagos Ibadan expressway in the Ibadan Judicial Division not a member of the Police Force and with intent to be taken to be a member wore Mobile Police Uniforms. **1 ½ Mark**

**COUNT 9**

**STATEMENT OF OFFENCE**

Kidnapping contrary to Section 364 (2) of the Criminal Code Law of Oyo State. **½ Mark**

**PARTICULARS OF OFFENCE**

OKPORORO VREND O, TAMUNO PREYE, and DIKE NNE on the 2nd day of August 2019 at Itire, along the Lagos Ibadan expressway in the Ibadan Judicial Division kidnapped Iyabo Ekaro. **1 ½ Mark**

**Dated this.. .day of.....2019**

**P.O Mbang Esq.**

**Senior State Counsel Mark**

**For: Attorney-General of Oyo State. ½ mark**

**IN THE HIGH COURT OF OYO STATE**

**IN THE IBADAN JUDICIAL DIVISION**

**HOLDEN AT IBADAN**       $\frac{1}{2}$  mk

**CHARGE NO: HC/567 ½ mk**

## BETWEEN

THE STATE..... COMPLAINANT  
AND ½ mk

## 1. OKPORORO VRENDO

## 2. TAMUNO PREYE

**3. DIKE NNE .....DEFENDANTS**

At the session of the High Court of Oyo State holden at Ibadan on the 19th day of August 2019, the Court is informed by the Honourable Attorney General of the State on behalf of the State that the following persons:

- OKPORORO VRENDỌ
- TAMUNO PREYE ½ mark
- DIKE NE

Are charged with the following offences:

**COUNT 1**

## STATEMENT OF OFFENCE

Armed Robbery contrary to Section 2 (a) and (b) of the Robbery and Firearms  
(Special Provisions) Act Ca R11LEN 2004 **½ Mark**

### PARTICULARS OF OFFENCE

OKPORORO VRENDU, TAMUNO PREYE, and DIKE NNE on the day of December 2018 at No.....in the Ibadan Judicial Division whilst armed with guns robbed Arrow Bank of the sum of N3,000, 000.00 (Three Million Naira) only. **1 ½ Mark**

**Dated this.. .day of.....2019.**

**P.O Mbang Esq.**

**Senior State Counsel Mark**

**For: Attorney-General of Oyo State**

**QUESTION 1B (i)**

The only objection to be raised by the defence counsel is that the hearing of the matter cannot proceed since the Defendants are not present in court as trial in absentia is unknown in this jurisdiction. **S. 210 CPL; Adeoye v State; Lawrence v King 1 Mark**

**QUESTION 1B (ii)**

My answer to the above will not be different assuming the Defendants were being tried at the High Court of the Federal Capital Territory as it does not fall within the exception contained in **s. 352 ACJA. 1Mark**

**QUESTION 2**

**IN THE HIGH COURT OF JUSTICE OF KADUNA STATE**

**IN THE KADUNA JUDICIAL DIVISION**

**HOLDEN AT KADUNA ½ Mark**

**CASE NO.... ½ Mark**

**BETWEEN:**

**OKECHUKWU PASCAL.....APPLICANT**

**AND ½ Mark**

**THE STATE.....RESPONDENT**

**MOTION ON NOTICE**

**BROUGHT PURSUANT TO SECTION 35 CFRN AND SECTION 341 (2) (a) (b) and (c)  
CPCL AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT ½ Mark**

TAKE NOTICE that this Honourable court shall be moved on the.....day of ..

the hour of 9:00 O'clock in the forenoon or so soon thereafter as the applicant  
may be heard praying this honourable court for the following:

An order of this honourable court granting the applicant bail pending the  
determination of this case

For such further or other order(s) as this honourable court may deem fit to make  
in the circumstances of this case. **1 Mark**

DATED THIS.... DAY OF.....2019

M.M.M Esq. ½ Mark

Justice for All Law Firm,

No. 23, Akpororo Street,

Suleja, Niger State.

For Service on:

Attorney-General% Mark

Ministry of Justice,

Kaduna State.

(b) Where the application is refused by the High Court, I would appeal against the refusal to the Court of Appeal to secure Pascal's bail by:

Filing a notice and grounds of appeal

Compilation and transmission of the record of the lower court refusing the application.

Filing the brief of argument

**NOTE APPEAL IS THE KEY WORD**

**1½ Marks**

c) The confessionnal statements of Razor and Scorpion on Okechukwu as their leader are only binding on both Razor and Scorpion. It can only bind Okechukwu where he adopts same either in words or action. **S 29 EA**

d) In the event where Scorpion and Razor deny making the statement, the court would admit the statement in evidence and determine the weight to be attached to it in the course of the judgment based on other corroborative evidence.

**1½ Marks**

e) In the event of Scorpion and Razor admitting making the statement but alleged that it made under duress, here the accused are trying to challenge the admissibility of the Statement on the ground that it was not voluntarily made.

Therefore, the court will have to conduct a trial-within-trial to first determine the Voluntariness of the statement. It is the outcome of the trial-within-trial that will determine the admissibility or otherwise of the confessional statement. **S.29 EA**

## **2 Marks**

(f) The court's refusal of the nolleprosequi in favour of Okechukwu was improper. This is because the power of the nolle is absolute and not subject to questioning.

**State v. Ilori; Audu v. FRN. 1½ Marks**

g) As a counsel, it would not be advisable to depose to the affidavit in support of your client's bail application because you might have to be called as a witness in respect of those facts you deposed to. **Rule 32(3)(C) of RPC.**

## **1½ Marks**

h) (1) That the applicant is suffering from sickle cell anaemia and tuberculosis, and his health is fast deteriorating. Attached is a copy of his medical report marked as 'EXH A'.

(2) That the Police lack adequate facilities to properly treat him. **1½ marks.**

## **QUESTION 3.**

- warrant of arrest issued by Mallam Dogo Sule in this case was invalid and improper. This is because under the CPL, a Justice of peace cannot issue a valid warrant of arrest. **S. 54(1) CPL. 2 Marks**
- Yes, the alibi was properly raised. This is because Hotman raised it timeously and gave particulars of his whereabouts. **2 Mark**

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BAR PART 11 AUGUST 2019**

**SECTION B**

**QUESTION 4**

(a) (i) The types of questions in 1 and 2 above are introductory questions and leading questions.

(ii) Question 2 is objectionable. This is because, though it is introductory in nature, it is not allowed when the witness is an expert, which puts his qualification in issue. **s.221 EA, 2011**

- (iii) Question 2 that is objectionable can be redrafted thus: "tell this honourable court your qualifications"

**6 Marks**

(b) (i) Question 3 is an open question

(ii) it is used to enable the witness tell his story without interruption.

(iii) Yes, it is allowed in this circumstance because it is best suited for examination-in-chief

(iv) The major danger of this type of question is the fact in issue thereby wasting the valuable time of the Court.

v) This type of question should not be asked during cross-examination **6 Marks**

(d) (i) where is the medical report?

(ii) If you see the medical report can you recognize it?

(iii) How can you recognize it?

(iv) Take a look at this document, is it the report?

(v) My Lord, I seek to tender the medical report in evidence

(e) Yes, my answer would be different. This is because a photograph is a computer generated evidence and requires a different foundation to be laid for its admissibility. **S. 84 EA, 2011 4 Marks**

The trial court can ground conviction on the evidence above because the evidence of an expert witness, if believed by the court, can ground a conviction. **s.68 (2) EA, 2011. However the court must warn itself that it is unsafe to convict on the uncorroborated evidence of the expert.**

**4 Marks**

## **QUESTION 5**

(a) The arraignment was invalid because:

(i) A defendant being arraigned shall be brought before the court unfettered unless the court sees cause to order otherwise **Section 271(2)(a) ACJA. S. 215 CPL; 187 (1) CPCL; 2110 ACJL(Lagos) and Kajubo v The State.**



Since there was no indication in the scenario that the defendants were violent, leading then into the dock with leg chains is a contravention of the provisions of **s. 271(2)(a) ACJA**

#### **4 Marks**

(ii) Plea is personal. This means that a defendant must plead to the charge by himself and not through a co-defendant or any other person - **Adamu v The State**. where several defendants are standing trial, each must take his plea personally. **Ogunye v The State**. Therefore Alhaji Jude's plea for himself and his friend is a nullity. **3 Mark**

(b). The application for bail by Audu Kama was improper. This is so because the court is not bound by the administrative bail granted by the police without authority.

#### **2 Marks**

(c) Considering the nature of the alleged offence, the court ought not to have granted the defendants' application to allow the police bail to continue. The Judge should have ordered the defendants to make a fresh application for bail pending trial. **1 Mark**

(d). A defendant shall be entitled to conduct his case by a legal practitioner or in person except in a trial for a capital offence or an offence punishable with life imprisonment. **S.267(1)**. See also **section 36(6)(c) of the 1999 CFRN**. For capital offences as in this case the court must assign a counsel to a defendant where he does not have one - **Section 267(4) ACJA; Josiah v The State**. The court erred in conducting the trial without legal representation for the defence which is a breach of their constitutional and statutory rights. **S. 36(6)(c) of the 1999 CFRN, s. 267 (1) ACJA, s.352 CPL and 186 CPCL. 2 Marks**

(e) The trial Judge was wrong when he refused Alhaji Jude's application for adjournment. A defendant is entitled to adequate time and facilities to prepare for his defence **s.36 (6) (b) of 1999CFRN**. Therefore a defendant may seek for

adjournment upon arraignment or at any stage of the proceedings to enable him secure the services of legal practitioner.

## 2 Marks

(f)

i). the defendants have adopted in its entirety, the evidence adduced by the prosecution;

ii). The defendant subsequently will neither give evidence nor call witnesses

iii). If the Judge, after reviewing and evaluating the evidence adduced by the prosecution believes the prosecution, the defendants will be convicted and sentenced accordingly. **Magajiv Nigerian Army; Babalola v The State, Ada v The State.**

\*My answer will be different if the defendants only raised a no case submission. Because where the no case submission is over-ruled, the defendants will have the opportunity to open their case and can give evidence and/or call witnesses. **3 marks**

(g) The defendants were tried for culpable homicide punishable with death, a capital offence, the punishment of which is death penalty, a mandatory sentence in which allocutus cannot mitigate the punishment. No, the trial Judge was wrong to sentence the defendants to ten years imprisonment since he has no discretion to exercise in this kind of offence carrying the mandatory Sentence.

## 2 Mark

### QUESTION 6.

- With regard to the issue of territorial jurisdiction, this matter borders on conspiracy and terrorism, which constitute federal offences, therefore, the Federal High Court, Gombe is the appropriate court to try the matter, **Ibori v. Federal Republic of Nigeria. 2 marks**

- On the other hand, as pertaining to the subject matter, the Chief magistrate court, Kubwa lacks the jurisdiction to entertain the matter. **2 Marks**
- The plea of not-guilty made by an accused person is that the accused persons have put themselves upon their trial, consequently, the prosecution will have to prove beyond reasonable doubt, every ingredient of the offence alleged- **ss. 217 CPA; 188 CPC; 275 ACJA, Sule v. the State; Ojo v FRN. 2 Marks**
- The Magistrate's reaction to the muteness of Rose Peter was wrong. Where an accused person remains mute as in the instant case, the magistrate should first conduct investigation, in order to determine whether the muteness is an act of malice or an act of God. Where the muteness is out of malice, the court shall then record a plea of not guilty for Rose Peters and proceed with the case. On the other hand, where the muteness is as result of the visitation of God, Rose Peters shall be detained at the Governor's pleasure. *Yesufu v State*; s. 276 (3) and (4) ACJA. **2 Marks**
- i. On the involuntariness of the confessional statement, the Court should have conducted a trial within trial - **s. 29 E.A; Olabode v State.**

The confessional statement of an accused person is not binding on a co-accused unless he adopts it by words or conduct. *COP v. Ude.*

ii) The Magistrate was wrong in overruling the objection. **3 Marks**

The decision of the defence to rest its case on the prosecution is proper. The confessional statement of Philip Belho is not binding against the other accused persons because they never adopted same, either by words or conduct, **Babalola v State. 2 Marks**

- The sentence imposed on the defendants is a nullity, because the trial Judge lacked jurisdiction. **2 Marks**