



**NIGERIAN LAW SCHOOL**  
**BWARI - ABUJA**  
**BAR FINALS EXAMINATIONS**  
**CRIMINAL LITIGATION**

**TUESDAY AUGUST 30, 2016**

**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)**

Following a Protest in Enugu organised by the Farmers Association of Nigeria against the invasion of their farms by marauders, some miscreants took the advantage to reign terror on some traders at Ogbete market, Enugu in May 2016. Olu Raska, while armed with cutlass and daggers entered the shop of Madam Jacqueline Adana and thereafter entered the shop of Madam Jacqueline Adanma and forcefully

collected her N200,000.00 being the sales of that day.. Alfa Ike overpowered Marylene Bitrus, a sales. girl inside the shop and had carnal knowledge of her. Teddy Nzobu made away with ten Samsung, television sets from the shop ablaze. ..' Jakeamba armed with a gun forcefully collected

...filed in the High Cou

1(a) Draft the information

## **THE LAW**

### **CRIMINAL CODE LAW OF ENUGU STATE, 2004 CAP. 30.**

#### **SECTION**

**270.** Any person who unlawfully kills another is guilty of an offence called murder, or manslaughter, according to the circumstances of tlhe case

**271.** Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances that is to say

- i. If the offender intends to cause the death of the person killed, or that of some other person;
- ii. . If the offender intends to do to the person killed or or to some other person grievous harm;
- iii. If death is caused by means of an unlawful purpose, which act is. of such a nature as to be likely to endanger human life.

In the second case, it is immaterial that the offender did not hurt the particular person who is killed.

In the third case, it is immaterial that the offender did not intend to hurt the particular person who is killed.

272. Any person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter."

274(i) Subject to the provisions of this section any person who commits the offence of murder shall be sentenced to death.

279. Any person who commits the offence of manslaughter is liable to imprisonment for life.

308. Any person who unlawfully has carnal knowledge of a woman or girl without her consent or with, her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.

309. Any person who commits the offence of rape is liable to imprisonment for life.

363. Any person who steals anything, and at or immediately before or immediately after the time of stealing it," uses or threatens 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, is said to be guilty of robbery.

364. Any person who commits the offence of robbery is liable to imprisonment for fourteen years.

365. If the offender is armed with any dangerous instrument, or is in company with one or more dangerous or offensive weapon or if, at or immediately before or immediately after the time of the robbery, he wounds or uses any other personal violence to any person, he is liable to imprisonment for life.

416. Any person who wilfully and unlawfully sets fire to any of the following things:

- i. Any building or structure whatever, whether completed or not;
- ii. Any vessel; whether complete or not
- iii. Any stack of cultivated vegetable produce, or of mineral or vegetable fuel;
- iv. A mine, Or the workings, fittings, or appliance of a mine, is guilty of a felony and is liable to imprisonment for life.

At the trial, the defence counsel-raised a preliminary objection, contending that leave of the court was not obtained before the information was filed this rendering the information incompetent before the court.

You are required to reply to this objection, explaining the procedure for obtaining leave of court to file an information.

## QUESTION 2

Two suspects Otom Okon and Peter, Paul were involved in the abduction of Lukas Keshinro the Onu of Ogba Kingdom, Lagos State on August 15, 2016. Base on a tip-off by Miss Stella Itong, a warrant of arrest was issued for their arrest by Inspector Sule Abuka and Corporal Benson Ojo 'went to their hideout in Abule-Egba, but discovered they had run away to Osogbo in Ogun State. On getting their house in Osogbo, the Police arrested and handcuffed the'duo, bundled into the Police van and returned, them to Lagos. In their statements at the Pote Station they claimed that they were at a'friend's house at Abuja on August 15, 2016.

On August 20, 2016, the two suspects were brought before the High Court of Lagos Sitting at Ikeja on a two count charge of abduction of the Monarch and rape of his daughter Mosunmola Oriade. The charges were read to them and the 1st, defendant stood mute whilst the 2nd defendant pleaded not guilty to the charges. The presiding judge recorded pleas of not guilty for both of them. During the trial, the prosecution called five witnesses including stella Itong and Mosunmola Oriade arnd closed its case. When the defence was called upon for its case, the Counsel for the 1st defendant made a no-case submission and called for final address. The Counsel for the 2nd defendant opted to open his case but the court held that he is estopped from opening his defence since the is defendants application failed.

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

(a) Comment on the manner of arrest and treatment of the defendants in the above scenario.

(b) At the close of the prosecution's case, what are the options open to the defendants and what are the implications of each of the options?

(c) List the grounds, if any, upon which a no-case Submission in the scenario may be made. Assuming that the no-case submission in the scenario was wrongly overruled and eventually the defendant was convicted, after he had given evidence and closed his case supplying information which led to his conviction, what is the implication and what options are open to him?

(d) Comment on the propriety or otherwise of the decision of the trial court to foreclose the defence of the 2nd defendant after the failure of the application of the 1st defendant.

(e) What is the difference between an ordinary statement made by the defendant in this case and a confessional statement?

(f) What does the statement made by the defendants at the Police Station suggest? When may it be said to have been properly made and what would be the duty of the prosecution?

(g) Comment on the propriety or otherwise of the procedure adopted by the Courts, when it entered the not guilty plea for the 1st defendant.

### **QUESTION 3.**

On March 12, 2014, Mr. Emmanuel Bobo and Chuks Maiyaga were arrested in Enugu State on allegations of treasonable felony. They were detained and refused bail by the Police. On June 20, 2014, after conclusion of investigations, the police believing that it would not be safe to prosecute the defendants in Enugu arraigned them before the Federal High Court sitting in Yenagoa, Bayelsa State for the offences of

Conspiracy to commit treason and treasonable felony. The defendants pleaded not guilty to the charges. At the trial, the prosecution called six witnesses and tendered the defendants' statements. Although, the defence counsel objected to the Confessional statements of the defendants sought to be tendered on the ground that they Were not voluntary, the court admitted same and marked them as exhibits 'A' and 'B. The defence did not call any witness but chose to rest their cases on that of the prosecution.

On January 8, 2016, the parties addressed the court and judgment was delivered on April 8, 2016, wherein the defendants were convicted and sentenced to death by firing squad. The defence counsel, displeased by the judgment, made the following remarks: "this is a mockery of justice, we will definitely appeal against this irony of a judgment".

### **Comment on the following**

- i. The detention of the defendants and refusal of bail by the Police.
- ii. The jurisdiction of the court.
- iii. The admissibility of the defendants' statements by the court
- iv. The action of the defence counsel in resting the case for defence on that of the prosecution.
- v. The sentence passed by the court.

## **SECTION B**

**PLEASE USE ANOTHER BOOKLET FOR THIS SECTION**

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

The accused person in this case was charged with murder. In the course of trial the following examination-in-chief of the first prosecution witness took place.

Q.1. Prosecuting Counsel: Am I correct to say that you are Corporal Jimoh Moses of the Nigerian Police Force and the Investigating Police Officer in this case

Defence Counsel: Objection my Lord.

Court: Objection overruled. Answer the question

Witness: Yes, My Lord.

Q.2. Prosecuting counsel: Do you know the accused person in this case?

Witness: Yes, I know him. He is my neighbour.

Q.3 Prosecuting Counsel: Can you tell this Honourable Court what happened on the 31st of August, 2014 with regard to this case?

Witness: I cannot remember clearly what happened on that day (witness then put his hand in his pocket and started reading the contents of the document to enable him testify).

Q. 4 After the witness had gone through the document in his pocket, the Prosecuting Counsel continued. Prosecuting Counsel: can you now remember what happened?



Witness: In fact I cannot remember anything about this case. I know nothing about this case.

Q.5 Prosecuting Counsel: You told this Court about the confession made by the accused, can you tell the Court more about how this was made by the accused?

Witness: The accused was informed about the charge against him and he desire to make a statement. I cautioned him and he made the statement which was recorded in English language. He signed it and it was dated September 11, 2014.

Defence counse: We object to the admissibility of this confessional statement. The accused person says he never made any statement at all to the Police on September 11, 2014 or at any other date. This is forgery, My Lord, We apply for a trial within trial.

Court: Objection Overruled

Q. 6 Prosecting Counsel: You were dismissed from your former employment in 2008 for stealing a golden wrist watch belonging to your Boss. Is that correct?

Witness: I am not on trial here.

Court: Please answer the question.

Defence Counsel: My Lord, I think I will object to My Learned friend's approach here.

Court: (cuts in): Please sit down Mr. Johnson. Don't again disrupt the flow of proceedings in this my Court

**Answer the following questions:**

What type of question is question one? Is it admissible in examination-in-chief?. Give reasons for your answer.

(i) In the light of your answer in (i) above, was the court correct in overruling the objection to question one?

(ii) How would you reply to the second objection of the Defence as the Prosecuting Counsel in this case.

(iii) What would be your response as the Prosecuting Counsel if the above objection was raised on the ground that the accused was deceived into making the confessional statement by a Policeman who disguised as a criminal in the Police cell?

(iv) Could the above confessional statement be admissible in the absence of an interpreter, assuming that it was recorded in English while the accused person spoke in Igbo language?

(v) If the Defence Counsel had opposed the admissibility of the confessional statement on the ground that the accused person was not taken before a Senior Police Officer after making the statement for confirmation, what would be your response as the Prosecuting Officer?

(vi) What was expected of the Defence Counsel when the witness put his hand into his pocket and brought out a piece of paper from which he read before he continued his evidence. Give reasons for your answer.

(vii) What step should the witness have taken before reading from document in his pocket and before continuing to testify?

(viii) When the witness answered question four by saying "In fact, I cannot remember anything about this case. I know nothing about this case" what should the Prosecuting Counsel have done at this stage?

(ix) Comment on the desirability of Defence Counsel's interjection and the Judge's response to it.

(x) When the Defence Counsel in response to question 5 said that he was applying for trial within trial, was the court right to have overruled the objection? Give reasons for your answer.

## **QUESTION 5**

At the end of the trial of Captain Libido by an Ebonyi State High Court sitting at Abakaliki, he was convicted of the murder of Chief Ukpata, the leader of Abakaliki Progressive Union. The Learned trial Judge, sentenced him thus:

"You are hereby sentenced to death by hanging and by lethal injection".

Counsel to the accused, stood up and said "My Lord, although my client is absent from court today, I can speak for him. I hereby give you Notice of Appeal against this judgment"

On the 5th day of June, 2016, i.e., three days after the judgment, the Convict was executed by the State after giving him 20 strokes of the cane to serve as deterrent to others. The father of the convict, Chief

Libdo wants to take over the pending appeal on behalf of his son because of the love he has for him.

He has lodged a fresh Notice of Appeal in the Registry of the Court of Appeal, four(4) months after the execution of his son. He filed an omnibus ground of appeal pending the receipt of the record of proceedings from the High Court.

**Answer the following questions, citing appropriate statutory and judicial authorities.**

1. Comment on the propriety or otherwise of the sentence passed on Captain Libdo by the court. Was it proper for the court to sentence him in his absence?
2. Comment on the validity of the Notice given by defence Counsel in this case.
3. Was the execution of Captain Libdo by Ebonyi State Government proper? Give reasons for your answer.
4. Comment on the propriety or otherwise of the Notice of Appeal filed by Chief Libdo.
5. What is an omnibus ground of appeal and when is it appropriate? Can an appeal be heard based on an omnibus ground alone? Give reasons.

## **QUESTION 6**

Adeolu Ibitayo and Henrietta Okechukwu grew up together at Simpson Street, Lagos Island, Lagos before Henrietta's family relocated to Abia

State after her secondary school education. They later met at Silverbird Galleria in Lagos graduation from their respective Universities and securing employment. They were excited at the re-union after along time apart. Adeolu invited Henrietta to his apartment at Lekki, Phase I the the next day for drinks, soon after that Henrietta gladly accepted. During the visit, Adeolu made amorous advances at Henrietta, which she bluntly turned down because that was not the reason for accepting to visit. Adeolu promptly locked up his 'apartment, turned the volume of music gadget full blast and raped rienrietta repeatedly. Henrietta promptly went to the Lekki Pólice Station When she gained her freedom to lodge a complaint.

Adeolu was arrested by the Police and taken in hand cuff and leg chains. His request to know why he was, arrested was met with severe beating. He was kept in Police Custody for 5 days before his admission to Police bail upon payment of #50,000.00 and an undertaking to report at the station everyday until Conclusion of investigation.

He was finally arraigned before the Lagos High Court at Igbosere on a One count charge for 'the offences of rape and abduction of Miss Henrietta Okechukwu by the Attorney-General ot Lagos State. The accused pleaded not guilty to the one-count charge. Counsel to the defendant raised an obiection to the order of court that he defendant be remanded in prison custody pending his trial, on the ground that the he was already admitted to bail by the Police.

At the trial, Henrietta was the 1st Prosecution Witness and she gave her testimony in Igbo language being the language spoken by the trial Judge and Prosecuting Counsel. Objections raised by the Defence Counsel to the manner of evidence and the request to have evidence

given in English language, which is understood by the defendant were refused on the ground that it was sufficient if the trial Judge was able to follow a witness testimony. The Judge in consequence cross-examined Henrietta for 30 minutes, for and on behalf of the defendant since neither the defendant nor his Counsel understood and could speak Igbo language. Now Comment on the following issues with the aid of judicial and statutory authorities:

1. The procedure adopted in the arrest of Adeolu.
2. The rights infringed during the arrest, if any.
3. The conditions attached to the Police bail
4. The correctness or otherwise of the one count charge.
5. The position of the Police bail, after the defendant was arraigned.
6. The legality of the evidence presented by Henrietta and the reasons given by the trial Judge for overruling the objection to the manner of presenting the evidence.
7. The decision of the trial Judge to cross-examine Henrietta for and on behalf of the defendant.

**COUNCIL OF LEGAL EDUCATION**

**NIGERIAN LAW SCHOOL**

**CRIMINAL LITIGATION MARKING SCHEME**

**BAR PART II AUGUST 2016**

**SECTION A**

**QUESTION 1(a)**

**IN THE HIGH COURT OF ENUGU STATE**

**IN THE ENUGU JUDICIAL DIVISION**

**HOLDEN AT ENUGU      ½ mk**

**CHARGE NO: HC/567 ½**

**mk**

**BETWEEN**

**THE STATE.....**

**COMPLAINANT AND ½ mk**

**(1) OLU RASKA**

**(2) ALFA IKE**

**(3) TEDDY NZOBU**

**(4) JAKE**

**JAMBA .....DEFENDANTS**

At the session of the High Court of Oyo State holden at Ibadan on the .....day of August 2016, the Court is informed by the Honourable

Attorney General of the State on behalf of the State that the following persons:

(1) OLU RASKA

(2) ALFA IKE

(3) TEDDY NZOBU

(4) JAKE JAMBA  $\frac{1}{2}$  mark

Are charged with the following offences:

### **1st COUNT**

#### **STATEMENT OF OFFENCE**

Armed robbery contrary to section 365 Criminal Code Laws of Enugu State

1MK

#### **PARTICULARS OF OFFENCE**

Oluraska Alfa Ike, Teddy Nzobu, Jake Jamba on the .... day of May 2016 at Ogbete Market Enugu, in the Enugu Judicial Division while armed with cutlass and daggers entered the shop and forcefully collected the sum of N200.00 belonging to Madam Jacqline Adana.

1  $\frac{1}{2}$  mks

### **2ND COUNT**

#### **STATEMENT OF OFFENCE**

Armed robbery contrary to section 36 criminal code law Enugu state.

1MK



## **PARTICULARS OF OFFENCE**

Oluraska, Alfa Ike, Teddy Nzobu, Jake Jamba on the ..... day of may 2016 at Ogbete Market Enugu, in the Enugu Judicial Division while armed with cutlass and daggers entered the shop and forcefully made away with ten Samsung Television sets property of Madam Jacqueline Adana. **1½ MKS**

(note any student who draft 10 separate counts for 10 television set should earn (2½ mark in all)

## **3RD COUNT**

### **STATEMENT OF OFFENCE**

Armed robbery contrary to section 365 Criminal Code Laws of Enugu State. **1MRK**

## **PARTICULARS OF OFFENCE**

Oluraska Alfa Ike, Teddy Nzobu, Jake Jamba on the ...day of May 2016 at Holy Ghost Park Enugu in the Enugu Judicial Division while armed with guns forcefully collected one Toyota Hiace (Eighteen seater) bus property of Chief Okafor Okonkwo.

## **4TH COUNT**

### **STATEMENT OF OFFENCE**

Arson Contrary to section 416 Criminal Code Laws of Enugu state

## **PARTICULARS OF OFFENCE. 1MK**

Oluraska, Alfa Ike, Teddy; Jake Jamba on the...day of May 2016 at Ogbete Market Enugu in the Enugu Judicial Division set on fire a shop Property of Jacqline Adana. **1½ MKS**

#### **5TH COUNT**

#### **STATEMENT OF OFFENCE**

Rape Contrary to Section 309 Criminal Code Law of Enugu State **1 MK**

#### **PARTICULARS OF OFFENCE**

Alfa Ike, on the.... .day of May 2016 at Ogbete Market Enugu, in the enugu judicial division raped marylene bitrus

#### **6TH COUNT**

#### **STATEMENT OF OFFENCE 1 MK**

Manslaughter to section 279 criminal code law of enugu state

#### **PARTICULARS OF OFFENCE**

Jake Jamba on the..... day of May 2016 along Holy Ghost ark/New Haven Road Enugu in the Enugu Judicial Division while recklessly driving a Toyota Hiace (eighteen seater) bus, caused the death of Adele Munachi.

**Dated this.. .day of.....2016**

**Xyz**

**Senior State Counsel Mark**

**For: Attorney-General of Enugu**

**State. ½ mark**

### Question (1b)

In replying to the preliminary objection raised by the defence Counsel, I will concede to the fact that where leave or consent is required to file an information and it is not so obtained, it renders the information incompetent before the Court. see **AGF v. Clement Isong section 340 CPA. 2½ MKS**

The procedure for obtaining consent to file an Information can be by way of letter addressed to the High Court Judge or by Motion Ex-parte, supported with an affidavit. Whatever mode is adopted, certain important facts must be stated and documented attached.

These include the proof of evidence unedited statement of the defendants, list of Witnesses, and list of Exhibits.

It must also be disclosed if a similar application has been made previously before another Judge and what the outcome was.

**3 MKS**

**(Total-25 MARKS)**

### QUESTION 2

A The defendants were handcuffed, and bundled into the police van in Oshogbo which was against the laid down procedure of arrest outside the State of issue. They were not supposed to be handcuffed except they were violent to escape arrest. **Section 4 CPL**

The arresting officers are supposed to take the warrant of arrest to the magistrate in the jurisdiction where the defendants reside. The Magistrate will ascertain that the warrant is issued by proper authority, that the offence is known to Law in the State of issue. Then he will endorse it approving the arrest of the defendants. The police officers after arresting the suspects will take them to

the endorsing Magistrate who may grant them bail if it is bailable offence and order that the suspects report to Court within 30 days in the State of Issue. **Apampa v COP, Section 3 (1) and (2) CPL**

B) The options open to a defendant at the close of prosecution's case are

1. He may make a no case submission.
2. He may rest his case on that of the prosecution
3. He may enter a formal defence. In which case
  - i. he may testify from the witness box, where he will be sworn and cross-examined; or
  - ii. he may make statement from the dock in which case he will not be sworn or cross examined; or
  - iii. may remain silent or rest his case on that of the prosecution. **3 MKS**

(C) A no case submission may be made where:

- i. No prima facie has been made by the prosecution linking the accused to the case at hand or where an essential element of the offence has not been established.
- ii. Where the evidence of the prosecution has been discredited on abcross examination or so manifesting weak that no reasonable tribunal could safely convict on it.

**1/2mk**

### **Ossai Emedo v The State**

Such conviction will not stand on appeal, He is liable to appeal against such conviction and such conviction may be upturned on appeal.

**Mumuni V State, Okoro v The State.**

**1/2mk**

D) The court was wrong to foreclosed the defence of the 2nd defendant because the 2nd defendant did not make a submission of no case to answer nor rested his case. it was only the 1st defendants who made a no case submission which failed therefore failed, the 2nd defendant is entitled to his defence. **Section 36(6) ©and (d) of the 1999. 2 MKS**

(E) Confessional statement is the statement as to admission of guilt as stipulated under **S. 28 EA** whilst ordinary statement is a statement relating the course ot event or what happened in a given case. **1 MK**

(F) The statement suggest defence of alibi. That is, that they were not at the scene of crime but somewhere else at the time when the offence was committed. It is properly raised when it is raised at the earliest time possible, that is, during the arrest of the suspect with suificent particulars, The duty on the prosecution is to investigate the

claim immediately it is raised to confirm or refute it **Nwosisi V the State; Mohammed v. The State.**

**2MKS**

(G) the judge erred in law when he entered a plea of not guilty for 1st defendant who/Stood mute when the charge was read to him. The proper procedure is for the court is to find out the reason for his muteness. Whether it is out of malice or it is an act of God

Before the judge will enter a plea he must conduct investigation to the reason for muteness. If it is out of malice the court will record plea of not guilty and the trial continues. If the muteness is an act of God, the defendant will be detained at the Governors pleasure

If he is deaf or dumb, It will be inquired whether he can follow the trial by means of sign language. Where he cannot he will be kept at the pleasure of the Governor. **Section 223 CPL, Yusuf v State, Karimu v. State. 3MKS**

**(TOTAL =15 MARKS)**

### **QUESTIONS 3**

I. Police have power to arrest and detain suspects pending conclusion of investigation- see section 4 &29 Police Act. These powers should be exercised in accordance with the time stipulated by the constitution that is, 24 hours or 48 hours as the case may be, and 'other. laws. See **Section 35 (4) and (5) of 1999 Constitution (as amended) and Sections**

**31) and 32 () ACJA.** The arrest and detention of suspects from March 12 to June 20, 2014 were unlawful and unconstitutional. The police should have released the suspects on bail upon their entering into a recognizance with or without sureties. **Section (1) ACJA**

**4MKS.**

II. Though the Federal High Court has one jurisdiction, the defendants ought to have been arraigned before the Enugu Judicial Division High Court where the offence was committed. The arraignment of the defendant before the Federal High Court, Yenagoa Judicial Division amounted to forum shopping- **Ibori v FRN**

**(Note: if a student uses the term wrong venue", it should be marked correct.). 2MKS**

III. The Court was Wrong in admitting the defendant's involuntary statements. It should have conducted a trial within a trial to ascertain the voluntariness or otherwise of the confessional statements before admitting them- **Section 29 (2) & (3) Evidence Act, Mohammed v the State; Olayinka v The State. 2mks**

The defense counsel should have not rested the case for the defense on that of the prosecution except where the prosecution's case was manifestly weak both in fact and in law. **Nwede v The State; Babalola v The State.** Resting the case of the defense on prosecution's case will not afford the defendants the opportunity to enter defence if overruled by the court-**Akpan v. The State.**

Counsel should have made a submission of no case to answer **Section 303 (1) ACJA; Igabele v The State**, or he should have entered defense **Section 258 ACJA. 4MKS**

V. The death sentence was unlawful by virtue of section 41 CCA, the offence of treasonable felony is punished with imprisonment for life, while conspiracy to commit the offence is punishable with 7 years imprisonment if no other punishment is prescribed Section 516 Criminal Code Act, the Court exceeded its limit by imposing death penalty. **3mks**

**(TOTAL 15 MARKS)**

**NIGERIA LAW SCHOOL**

**BAGAUDA KANO**

**MARKING SCHEME FOR AUGUST 2016 BAR FINAL EXAMINATIONS**

**CRIMINAL LITIGATION**

**SECTION B**

**QUESTION 4**



Question 1 is a leading question. It is allowed in examination in chief because it relates to introductory matters. Generally, however leading questions are not allowed in examination-in-chief. **See section 221.EA 201.**

The court was right in overruling the objection to question 1 above because that question though a leading question borders in introductory matter which is an exception statement. **See S. 29. EA 2011.**

**2MKS**

ii. The second objection of the defence counsel was wrong because if the accused person said he never made the statement, i the statement is still admissible as retraction goes to the weight and not admissibility of a Confessional statement. **See S. EA 2011.**

**2MKS**

iii. If the objection was raised of the ground that the accused was deceived into making the confessional statement by the police man who disguised as a criminal in the police cell, I will reply that the statement would still be admissible in law leaving the weight to be attached to be decided by the judge, **section 31 of the EA 2011. 2MKS**

iv. No both the English version and Igbo version of the statement should have been tendered in evidence-to make the statement admissible. The interpreter must be called to give evidence as to the interpreter. **See Olalekan. The State.**

**2MKS**

v. My response in this case will be that taking a confession statement to a senior police officer is only an administrative procedure made to assist the police in the investigation of their cases. It is not a rule of law and therefore non observance of the procedure would not validate the trial

**2MKS**

vi. The defence counsel was supposed to object to the procedure. This is because a witness can only refresh his memory after leave of the court has been sought from the court. **See S. 239 EA 2011. 2MKS**

Vii. The witness ought to have indicated that he needs to refresh his memory, this will be followed with an application for the leave to do so. If leave is granted, he may refresh his memory from any of the following:

a. Document made by him at the time of the transaction in respect of which he is questioned.

b. Document made by another person but which was read by him at the time of the transaction.

c. If he is an expert from professional Treatises-**See S. 239 EA**

**3MKS**

viii. When the witness gave the answer in question 4, prosecuting counsel was supposed to apply to the court to declare the witness a hostile witness and thereafter cross-examine him. **See Esan v The State.**

**2MKS**

ix. The defence counsel was right in his objection because the question is scandalous and not allowed in cross-examination. **See S. 227 EA 2011.**

The judge was wrong in overruling the objection of the defence counsel because it is his duty to raise objections to inappropriate question to put in his witness.

x. The defence counsel was wrong when he applied for a trial within trial in response to question 5 because when an accused person retracts his confessional statement the court will still admit it and determined the weight to be attached to it looking at surrounding evidence in the case a trial within is only necessary where an accused person challenging the voluntariness of a confessional statement, **See S 294 EA 2011**

**3MKS**

**Total=25 MARKS**

## **QUESTION 5**

1. The Sentence passed is inappropriate. Sentence of death by hanging and lethal injection is unknown to the criminal code law of Ebonyi State. The appropriate sentence should be by hanging still he is dead and may the Lord have mercy on his soul.

It was wrong for the court to have sentenced the defendant, captain Libdo in his absence. This is because trial and sentence in absentia is

unknown to the Criminal justice system in Nigeria even where the trial is in his absence, the sentence must be in his **presence. State v.**

**Adeoye. 3MKS**

2. The notice of appeal given by the defence counsel is incompetent this is because in criminal trial, notice of appeal and application for leave to appeal must be signed by the defendant himself to be competent. In the present case, the defendant was not even in court when he was sentenced. **Uwazuruike v. AG federation Order 17 rule 4(1) Court of Appeal Rules 2011.**

**3MKS**

3. The execution of captain Lidbo by the Ebonyi State government was Wrong and improper. This is because the execution was carried out whilst appeal against sentence was pending and have not been heard. **Bello v AG Oyo State.**

Where the defendant is convicted or sentence to death, the notice of appeal shall operate as stay of execution therefore, it was wrong for the state government to carry out execution on the defendant before hearing of his appeal.

4. The appeal of the father of the convicted Chief Libdo is incompetent. Only parties to a criminal trial can appeal. Chief Libdo is not a party to the trial, and therefore cannot in this case-**section 243(a) constitution of the federal republic of Nigeria 1999 (as amended), Akinbiyi v Adelabu. 3MKS**

5. The omnibus ground of appeal is:

**"That the decision was unreasonable and cannot be supported having regard to the evidence adduced"**

Yes, an appeal can be heard based only on the omnibus ground of appeal but the appellant must be able to show that the judgement was erroneous or perverse. **Enitan v The State**

**3MKS**

**(TOTAL=15 MARKS)**

## **QUESTION 6**

1. The procedure adopted in the arrest of Adeolu was wrong because by the provision **of section 34(1) of the 1999 constitutions (as amended)**, a person under arrest shall not be put under any form of indignity or restraint except where there is an attempt to escape or apprehension from him. None of the

mentioned exceptions however exist in the circumstance of this case.

**2MKs**

2. The following right of the suspect were infringed by the police in the course of the arrest:

a. freedom from torture, inhumane and degrading treatment under **section 34(1) of the constitution**

b. right to be informed promptly of the reason for his arrest, **S. 35(4)& (5) constitution**

c. The right to prompt arraignment before the court. **S 35(4) & (5)**

## **Constitution**

3. The condition attached to the bail was wrong. This is so because the administration of criminal justice law of Lagos state, 2011 does not allow police to receive money payment as a condition for bail. Signing a bail bond or entering into a recognizance for a certain sum as may be fixed by the police and payable by his sureties in default is what the law allows as a condition for bail. **S 17(2) ACJL. 2MKS**

4. The one count charge for the offence of rape and abduction was wrong and offended the rule against duplicity. **Rv Ugo.**

**2MKS**

5. The police bail come to an end on the arraignment of the suspect since the court is not bound by the bail so granted by the police. The court has discretion whether or not to grant bail to the accused. **S 115(2) ACIL**

**2MKS**

6. In the absence of interpretation to the language understood by the accused and his counsel the evidence given by Henrietta goes to no issue the accused has right to fair hearing and to the understanding of her evidence for the purpose of cross examination under. **S 30(1)& (6) (108d.)** court the reason for overruling objection and allowing the witness to give in Igbo language without interpretation was therefore wrong.

**2MKS**

7. The learned trial judge was wrong and guilty of descending into arena of conflict when he cross examined Henrietta on behalf of the

defendant. The judge should have maintained neutrality and allowed the parties to conduct their respective cases as required by law. **Akinfe vs The State.**

**2MKS**

**(TOTAL=15 MARKS)**