



NIGERIAN LAW SCHOOL

BWARI - ABUJA

BAR FINALS EXAMINATIONS

CRIMINAL LITIGATION

TUESDAY 14TH JANUARY, 2020

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)

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo and Shonto Dike on 1 October, 2019 met at Uwakwe Obumseli's house at No. 10 Uwani Road, Benin City, Edo State, Nigeria. The five resolved to take certain steps that will turn their lives around to become billionaires before 31st December, 2019.

To actualise their plan, the gang leader- Uwakwe Obumseli went to one Christopher Tolgate of No. 5 Miliki Avenue, Benin City to buy five brand new AK 47 rifles. The gang proceeded to a forest along Benin/Ore Federal Highway where

they perpetrated the atrocities. On the 28th October, 2019, Chief Everest Pam who was travelling from Benin to Lagos was stopped at gun point and taken hostage inside the forest for 10 days. Chief Everest was not released until the sum of N50,000,000.00 (Fifty Million Naira) only was paid as ransom to the gang. Also, on the 31 October 2019, the gang at the same place kidnapped one Barrister Sunday Ego and kept him in their custody for 20 days. Barrister Sunday Ego was not released until his relations paid the sum of N100,000,000.00 (One Hundred Million Naira) only to the gang.

On the 2nd November, 2019, the gang again stopped one Madam Fine face Gidiga who was kept in the forest for 17 days. While she was in their custody, Madam Fine face Gidigba was raped severally by the gang leader Uwakwe Obumseli and Umezinne Oyemli. She was not released until the sum of N10,000,000.00 (Ten Million Naira) only was paid by her husband Chief Wilson Gidigba to the gang. However, on the 5 November, 2019, the Policemen from Benin City Central Police Command went after the gang in the forest. There was a hot exchange of gun between the gang and the Police in an attempt to arrest them in the process, Sergeant Kokori Kagina was hit by bullet fired by Shonto Dike and he died on the spot. Uwakwe Obumseli, Umezinne Oyemi, Ogara Dialoke, Bassey Dikibo and Shonto Dike have been arrested by the Nigeria Police and they are to be arraigned in Court.

The Attorney-General has instructed a State Counsel, P. K. Dulak, Esq, to file information against the suspects.

Draft the information.

THE LAW-CRIMINAL CODE

SECTION 319 (1)-Subject to the provisions of this Section, any person who commits the offence of murder shall be sentenced to death.

SECTION 364 (2)- Any person who unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to Court for his release or from disclosing to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony, and is liable to imprisonment for ten years.

SECTION 365- Any person who unlawfully detains another in a place against his will or otherwise unlawfully deprives another of his personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for two years.

SECTION 358-Any person who commits the offence of rape is liable to imprisonment for life.

SECTION 428 (d) - Any person who shall have in his possession and not give a satisfactory account of his possession of any arms, ammunition, clothing accoutrements, medals or other appointments, furnished for the use of the Armed Forces of Nigeria or of the Police Forces, is liable to a fine of N1,000.00 (One Thousand Naira) only or to pay double the value of all or any of the several articles which he shall so become or be possessed of.

SECTION 402

A person who commits the offence of robbery is liable to imprisonment for fourteen years. IF the offender is armed with any dangerous or offensive weapon or instrument and is in company with one or more other person or persons, 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 with or without caning

SECTION 516-Any person who conspires with another to commit any felony, or to 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 convicted of the felony in question is liable to less than imprisonment for seven years then to such lesser punishment.

QUESTION 1(b)

As the prosecuting Counsel, there is a need to remove a count and replace it with another (new count) in the course of the trial. Briefly explain how this can be achieved.

QUESTION 2

During the last flooding of some States in Nigeria including Bayelsa, many lives were lost, houses submerged and properties worth millions of naira lost. Yenagoa, the capital of Bayelsa state was heavily flooded and as a result, many people left their homes. Some miscreants used the opportunity to break into people's homes in the affected areas to steal. Four of them, Tare, Timi, Bolupe and Dokubo were arrested by the police and detained at the police station pending the conclusion of investigation.

On 1 December, 2019, the defendants were arraigned before the Federal High Court, Yenagoa for conspiracy, malicious destruction of property and stealing by the Attorney-General of the Federation, who described the flood as a national disaster.

When the charge was read and explained to the defendants, Timi pleaded not guilty for himself and on behalf of the other defendants. The defendants application for bail was refused. The Judge in his ruling described the defendants action as a crime against humanity.

The Prosecution called five (5) witnesses, two of whom were local divers and fishermen respectively, who actually caught the defendants carting away peoples properties during the flood disaster. At the conclusion of the prosecutions case, the defendants decided to rest their case on that of the prosecution.

Now answer the following questions:

- (a) As defence Counsel, what preliminary objections would you raise in respect of the above scenario?
- (b) Draft the Notice of Preliminary Objection ONLY (without any supporting document)
- (c) Comment on the Attorney-General of the Federation's reason for the arraignment and his power to do so.
- (d) Comment on Timi's plea for himself and on behalf of the other defendants.
- (e) Was the defendants' decision to rest their case on that of the prosecution? Give reasons for your answer, stating the legal implication of such decision.
- (f) Comment on the trial Judges reason for refusing the defendants' application for bail.
- (g) Draft the application for bail ONLY (without any supporting documents)

QUESTION 3

A case of conspiracy to commit murder and murder was reported against Ika and Boji at the Ilishan Police Station in Ogun State. They were alleged to have conspired and murdered one Beauty, Ika's girlfriend who had been threatening to expose their affair to Ika's wife. At the Police Station after being tortured, starved and denied access to Counsel and family for two weeks, Ika wrote a confessional statement admitting that they both committed the offences, but Boji denied vehemently.

Upon arraignment, Ika pleaded guilty and was promptly convicted and sentenced to death by firing squad. Boji pleaded not guilty. At the close of the Prosecution's case, Boji's Counsel made a No Case Submission, which was upheld by the court. In a 50-page ruling discharging him, the Judge thoroughly analysed the case.

Boji was excited, but as soon as he stepped out of the dock, he was re-arrested by the Police, who subsequently re-arraigned him for the same offences, stating that he had merely been discharged and not acquitted. The Solicitor-General of Ogun State was however furious about this development and has personally come to the court to enter a 'nolle prosequi' in the case.

With the aid of relevant judicial and statutory authorities, comment on the propriety or otherwise of:

- (a) the detention of the suspects at the Police Station.
- (b) The admissibility or otherwise of the confessional statement of Ika and whether or not it can be used against Boji.
- (c) The arraignment, conviction and sentence of Ika.
- (d) The ruling on the No Case Submission by Boji and his subsequent re-arrest by the police.

(e) Entry of nolle prosequi by the Solicitor-General

SECTION B

QUESTION 4

Elbert Demiss, an expatriate attached to Abakiliki Special Rice Processing Company Ltd was arraigned at an Abakiliki High Court on a two-count information of indecent assault and rape. At his trial, the prosecution, in a bid to prove its case, called Dr. Ogbunigwe, a consultant gynecologist from EBSU Teaching Hospital as PWI. During his testimony the following transpired.

1. Prosecuting Counsel: you are Dr Ogbunigwe Consultant Gynecologist, fellow Nigerian Medical College and President, Nigerian Society of gynecologists?

Answer: yes, my Lord

2. Prosecuting Counsel: you examined the prosecutrix in this case and wrote a report, am I right?

3. Defence Counsel: objection my Lord. Counsel is leading the witness

4. Court: objection overruled. Please continue

5. Prosecuting Counsel: please tell the court everything you know about this case.

Answer: I examined the prosecutrix and found evidence of penetration and injuries in her private part. The summaries of my findings are in my report

6. Prosecuting Counsel: My Lord, I apply to tender the report in evidence

7. Defence Counsel: Objection my Lord, counsel has not laid proper foundation to tendering this report

8. Court: Objection sustained counsel please lay proper foundation

9. Prosecuting Counsel: do you have any other thing to tell this Court

Answer: No my Lord. Just a few words

10. Court: Defence counsel, do you have any question the witness

Answer: Yes my Lord, Just a few questions

11.. Defence Counsel: Dr Ogbunigwe. You are a notorious abortionist who have been sanctioned severally by the Medical and Dental Council for Unprofessional conduct. Is it correct?

. Prosecuting Counsel: My Lord I object to the above question, counsel is the witness

12. Court: Question sustained, please continue.

Answer the following questions

(a) What type of question is question 1? is it allowed in this case

Give reasons

(b) What type of questions is question 2? Was the court right in overruling the objection?

- (c) What type of questions is question 5 and what are its use in examination-in-chief?
- (d) Comment on the validity of defence counsel's objection to the application in (6) above? Was the court right in upholding the objections?
- (e) In five paragraphs stated and numbered chronologically, outline how you will lay proper foundation for tendering of the report in this case
- (f) Comment on the propriety of the question asked by defence counsel in (11) above. Was the court right in sustaining the objection?
- (g) What possible remedies are open to the witness against the question put to him by the defence counsel in this case?

QUESTION 5

At the trial of Balogun Akpati for murder before Justice Adetokumbo of Ogbomosho High Court, the charge was read to him in Yoruba language by the Youth Corps member attached to the court who speaks Yoruba fluently. The defendant refused to plead. The judge in anger recorded a plea of not guilty for him and ordered the prosecution to open its case. Out of the 10 witnesses listed on the back of information, the prosecution called on three, excluding the only eye witness to the murder and the investigating police officer. At the close of the case for the prosecution, the defendant opted for 'a no case submission'

The learned trial judge, Adetokumbo J, overruled the no case submission as follows:

This no case submission is without merit and same is hereby overruled". The matter was adjourned for defence. On the date fixed for defence, counsel to the defendant was bereaved and could not attend court. The defendant informed the court about this development and sought for an adjournment, but the judge refused the application.

He read out the options open to the defendant to him and he elected to remain silent. In the prosecution's final address, he urged the court to convict the defendant because his silence was an indication of his guilt. He was convicted and sentenced to death by firing squad after his allocutus was rejected by the court,

Answer the following questions:

1. Comment generally on the validity of the arraignment in this case?
2. Was there any obligation on the court when the defendant refused to plead? Give reasons for your answer.
3. What is the implication of the decision of the prosecution to call only three (3) witnesses out of the ten (10) listed on the information?
4. What effect does the short ruling on the no case submission have on the trial, assuming the ruling is appealed against?
5. Comment on the propriety or otherwise of the refusal of application for adjournment in this case.
6. Discuss the implication of the comment by the prosecution on the trial.
7. Comment on the validity of the sentence of the court in this case.

QUESTION 6

Justice Ikeme Popoola of the Federal High Court Lagos is presiding over the trial of Arizone Gilmor, Perikoma Brumah and Ayatola Briggs for unlawful possession of cocaine. At their arraignment on October 15th 2019 and before the charge was read, the Attorney-General of the Federation through a State Counsel made an oral application to take over the proceedings which was objected to by the prosecuting counsel from NDLEA and the objection was upheld by the court. The Legal Assistant to the Judge read the charge in block and the plea was taken in block.

Before plea was taken objection was raised on grounds of duplicity but overruled by the court. The application by the defence Counsel for stay of proceedings pending appeal on the ruling of the court refusing the bail application was also refused.

At the trial the prosecution called two of its witnesses but before the third witness was called the Judge was elevated to the Court of Appeal. An application by the prosecution for fiat to enable justice Popoola to continue with the proceedings despite the elevation was opposed by the defence counsel.

Answer the following questions with the aid of judicial and statutory authorities.

- (a) Comment on the propriety or otherwise of the Attorney-General's application to take over the proceedings before the arraignment of parties in Court.
- (b) Comment on the propriety or otherwise of the charge being read by the Judge's Legal Assistant.
- (c) Comment on the propriety or otherwise of the reading of the charge in block and taking of the plea in block.

(d) Comment on the propriety or otherwise of the refusal of the application for stay of proceedings by the Judge.

e) In the circumstances of the case, comment on the propriety or otherwise of the request by the prosecution for a Judge of the Federal High Court elevated to the Court of Appeal to continue to preside over the trial previously holding before him at the Federal High Court.

**COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL
JANUARY 2020
BAR PART II EXAMINATION
CRIMINAL LITIGATION
MARKING SCHEME**

SECTION 1

CRIMINAL

LITIGATION

SECTION A

QUESTION 1(A) (COMPULSORY)

**IN THE HIGH COURT OF EDO STATE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN
CHARGE NO.....**

BETWEEN:

THE STATE.....COMPLAINANT

AND

1. UWAKWE

2. OBUMSELI

3. UMEZINNE

4. OYEMLI

OGARA

5. DIALOKE

6. BASSEYDIKIBO.....DEFENDANTS

7. SHONTO DIKE

8. CHRISTOPHER

TOLGATE

At a session holding at Benin on theday of.....2020, the Court is informed by the Attorney General of Edo State on behalf of the State that the following persons:

UWAKWE

OBUMSELI

UMEZINNE

OYEMLI OGARA

DIALOKE BASSEY

DIKIBO SHONTO

DIKE

CHRISTOPHER TOLGATE; are charged with the following offences:

COUNT ONE

STATEMENT OF OFFENCE

CONSPIRACY contrary to section 516 of the Criminal Code Law of Edo State

PARTICULARS OF OFFENCE

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo and Shonto Dike on 1st of October, 2019 at No 10 Uwani Road, Benin City, Edo State, within the Benin Judicial Division conspired or agreed to commit felony.

COUNT

TWO STATEMENT
OF OFFENCE

MURDER contrary to section 319(1) of the Criminal Code Law of Edo State PARTICULARS OF OFFENCE

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo and Shonto Dike on 5th of November, 2019 at the forest along Benin/Ore Federal Highway, Edo State, within the Benin Judicial Division shot and killed Sergeant Kokori Kagina

COUNT THREE
STATEMENT OF
OFFENCE

UNLAWFUL IMPRISONMENT/KIDNAPPING contrary to section 364(2) of the Criminal Code Law of Edo State

PARTICULARS OF OFFENCE

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo and Shonto Dike on 28th of October, 2019 at the forest along Benin/Ore Federal Highway, Edo State, within the Benin Judicial Division abducted and unlawfully imprisoned Chief Everest Pam for a ransom of N50,000,000.00 (Fifty Million Naira)

COUNT FOUR
STATEMENT OF
OFFENCE

UNLAWFUL IMPRISONMENT/KIDNAPPING contrary to section 364(2) of the Criminal Code Law of Edo State

PARTICULARS OF OFFENCE

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo and Shonto Dike on 31st of October, 2019 at the forest along Benin/Ore Federal Highway, Edo State, within the Benin Judicial Division abducted and unlawfully imprisoned Barr. Sunday Ego for a ransom of N100, 000,000.00 (One Hundred Million Naira)

COUNT FIVE
STATEMENT OF OFFENCE

UNLAWFUL IMPRISONMENT/KIDNAPPING contrary to section 364(2) of the Criminal Code Law of Edo State

PARTICULARS OF OFFENCE

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo and Shonto Dike on 2nd of November, 2019 at the forest along Benin/Ore Federal Highway, Edo State, within the Benin Judicial Division abducted and unlawfully imprisoned Madam Fineface Gidigba for a ransom of N10,000,000.00 (Ten Million Naira)

COUNT SIX

STATEMENT OF OFFENCE

UNLAWFUL POSSESSION OF FIREARMS contrary to section 428(d) of the Criminal Code Law of Edo State

PARTICULARS OF OFFENCE

Uwakwe Obumseli, Umezinne Oyemli, Ogara Dialoke, Bassey Dikibo, Shonto Dike and Christopher Tolgate on 28th of October, 2019 at No 5 Milki Avenue, Benin City, Edo State, within the Benin Judicial Division were in unlawful possession of firearms (AK 47 Rifles).

COUNT SEVEN
STATEMENT OF
OFFENCE

RAPE contrary to section 358 of the Criminal Code

Law of Edo State PARTICULARS OF OFFENCE

Uwakwe Obumseli and Umezinne Oyemli, on 2nd of November, 2019 at the forest along Benin/Ore Federal Highway, Edo State, within the Benin Judicial Division raped Madam Fineface Gidigba.

DATED.....DAY OF 2020

.....

P.K DULAK
ESQ. STATE
COUNSEL

FOR: ATTORNEY GENERAL OF EDO
STATE

QUESTION 1B

As a prosecuting counsel, in order to remove a count from the charge and replace it without a new count, I will bring a formal application seeking the leave of court to amend the charge.

The application will be by motion on notice supported with an affidavit stating the reasons for the amendment and exhibiting the proposed amendment and a written address.

QUESTION 2

- a) As defence counsel, the preliminary objections I will raise are:
That the federal High Court lacks jurisdiction to try the offence
Secondly, that the Attorney General of the Federation is not the
appropriate prosecutorial authority to prosecute
the offences.

b) Draft of Notice of preliminary objection:

IN THE FEDERAL HIGH COURT
OF NIGERIA IN THE YENAGOA
JUDICIAL DIVISION HOLDEN AT
YENAGOA

CHARGE NO.....

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA

.....COMPLAINANT/RESPONDENT

AND

TARE

TIMI.....DEFENDANTS/APPLICANTS

BOLUPE

DOKUNBO

NOTICE OF PRELIMINARY OBJECTION

BROUGHT PURSUANT TO SECTION 251 & 174 OF THE 1999
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS
AMENDED) AND WITHIN THE INHERENT JURISDICTION OF
THIS HONOURABLE COURT

TAKE NOTICE that at the trial of the above charge the
Defendant/Applicants intends by way of preliminary objection to
challenge the competence of this trial, and may be heard praying this

Honourable Court for an Order striking out the charge and discharging the defendants.

AND TAKE FURTHER NOTICE that the grounds on which the Defendant/Applicant intends to rely on are as follows:

The Federal High Court lacks the substantive jurisdiction to try the alleged offences.

The Attorney General of the Federation is not the appropriate prosecutorial authority to prosecute the offences.

DATED THISDAY OF 2019

.....
..... Samuel
Ayodeji Esq
Counsel to the
Defendants
Excellus Law Firm
10 Yaba Road, Lagos

FOR SERVICE ON:
Attorney General of the
Federation Federal Ministry of
Justice
No 1 Ikoyi Hall, Lagos

- c) The power of the Attorney General of the Federation to institute criminal proceedings is restricted to offences made pursuant to an Act of the National Assembly. He can only prosecute a state offence with the fiat of the Attorney General of the state; **section 174 CFRN; *Edet v State***

In the instant case, the reasons given by the Attorney General of the Federation that the flood is a natural disaster does not bring the offences committed by the defendants within his powers. Therefore, he lacks the power to prosecute the offences

- d) The position of the law is that plea must be personal; thus where there are several defendants, each defendant must plea personally to the charge; ***R v Pepple***. Therefore, the plea of Timi for himself and the other defendants was wrong and renders the trial invalid.

- e) No, the defendants were wrong to have rested their case on that of the prosecution, this is because the evidence of the prosecution is overwhelming (from eye witnesses) and clearly implicated the defendants.

The legal implication of resting their case on that of the prosecution is that the defendants are adopting the evidence of the prosecution and have elected not to lead evidence nor call witnesses. The court can convict based on such evidence if it is sufficient enough;

Babalola v State, Igabele v State

- f) A judge has discretion to grant or refuse to grant bail, however such discretion must be exercised judicially and judiciously. In the instant case, the offence committed by the defendants are

bailable offences therefore the reasons given by the court in refusing to grant bail was improper and unlawful; **Bamaiyi vState.**

**g) Draft application for bail (Note: you can draft
motion or summons)**

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE YENAGOA
JUDICIAL DIVISION
HOLDEN AT
YENAGOA**

**CHARGE
NO.....**

**BETWEEN:
THE FEDERAL REPUBLIC OF NIGERIA**

**.....
COMPLAINANT/RESPONDENT
AND
TARE**

**TIMI..... DEFENDANTS/APPLICANTS
BOLUPE
DOKUNBO**

SUMMONS FOR BAIL

**BROUGHT PURSUANT TO SECTIONS 35(4), S. 36(5) OF THE
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA
1999 (AS AMENDED), SECTION 341(2) and (3) OF THE
CRIMINAL PROCEDURE CODE ACT AND UNDER THE
INHERENT JURISDICTION OF THIS HONOURABLE COURT**

LET ALL PARTIES attend at this Honourable court on theday of 2019 at the Hour of 9 O'clock in the forenoon or so soon thereafter on the hearing of an application for bail by counsel on behalf of the Accused person/ Applicant for:

AN ORDER admitting the Defendants/Applicants to bail pending the determination of the trial before this court.

AND FOR SUCH ORDERS OR FURTHER ORDERS as this Court may deem fit to make in the circumstances.

DATED THISDAY OF.....2020

FOR SERVICE ON:

The Hon. Attorney-General of the Federation Federal Ministry of Justice

This Summons was taken out by: Emokiniovo Dafe-Akpedeye
(Applicant's counsel)

No. 15 Law School Close, Bwari, Abuja,

QUESTION 3

- a) A person arrested is entitled to his or her fundamental which includes; right to bail, right to dignity of human person, right to counsel of his choice and above all right to be charged to court within a reasonable time; **Section 34 & 35 of the 1999 Constitution of Nigeria as amended**. In the instant case, the detention, torture, starvation of the suspects and their denial of access to a lawyer is unlawful and a breach of their fundamental human rights.
- b) A confessional statement is only admissible if it was made voluntarily; **section 29(2) Evidence Act**. In this case, Ika was tortured before making the statement and therefore it is inadmissible; **Adamu v State; Mohammed v State**.
On the other hand, a confessional statement is only admissible against the maker and it is not binding on a co-defendant unless he admits it expressly or by conduct; **section 29(4) of the Evidence Act**. Therefore the confessional statement of Ika if admitted cannot be used against Boji.
- c) The position of the law is that where a defendant pleaded guilty to a capital offence, the court shall record a plea of not guilty for him and proceed with the trial; **Olabode v State; Udofia v State**. Secondly, the sentence for murder is death by hanging and not death by firing squad. Therefore the arraignment, conviction and sentence of Ika are invalid, null and void.
- d) The position of the law is that where a no case is rightly upheld, it will amount to a discharge and acquittal. Therefore, the defendant cannot be arraigned or tried again for the same offence; **Emedo v State; Odojin Bello v State**. In the instant case, the re-arrest of Boji by the Police for the same offence was wrong and unlawful.

- e) It is on the Attorney General that can enter nolle prosequi orally; ***section 211 CFRN; Chukwurah v State***. An officer of the office of the Attorney General can only enter nolle with a written authorization signed by the Attorney General. Therefore the nolle prosequi entered by the Solicitor General is unlawful and invalid.

SECTION B

QUESTION 4 (COMPULSORY)

- a) Question 1 is a leading question. It is not allowed in this case. This is because leading questions are generally not allowed in examination in chief. Although it may be allowed in introductory matters, in this instance it bothers on the qualifications and experience of the witness who is an expert; **section 221(1) & (2) of the Evidence Act 2011**.
- b) Question 2 is also a leading question. No the court was wrong to have overruled the objection because leading questions are not allowed in examination in chief.
- c) Question 5 is an open question. It is used in examination in chief to enable a witness give his testimony from his or her personal knowledge and experience. It is used in order to make the testimony of the witness more believable by the court.
- d) In trials, proper foundations must be laid before a document whether private or public can be tendered in evidence. In this case, the Prosecuting counsel did not lay the proper foundation therefore the defence counsel's objection was validly raised and was rightly upheld by the court.
- e) I will lay the proper foundation by asking the witness the following questions:
You said you made a report of your findings?
Do you have the Report in court?

If you see the report would you be able to identify it?

How would you identify it?

Is this the Report you made?

My Lord I seek to tender the Report as evidence in this case

- f) The question asked by the Defence Counsel is a scandalous, vexatious and purposely intended to annoy the witness, such questions are not allowed in Cross examination; **section 227 and 228 of the Evidence Act**. Therefore it was not proper and the court was right in sustaining the objection by the prosecuting counsel.
- g) The possible remedies available to the witness against the question put to him by the defence counsel is either to avoid answering such questions or urge the court to caution the defence counsel from further asking such questions.

QUESTION 5

1. The procedure for a valid arraignment is that the defendant will be brought to court unfettered, the charge read (in English language) and interpreted to the defendant in the language he understands (if he does not understand English language) by the Registrar or any other officer of the court and the defendant will then take his plea; ***Edu v COP, Kajubo v State.***

In the instant case, the charge was read in Yoruba language instead of English, secondly it was read by a Youth Corper posted to the court who neither qualifies as a Registrar nor as an officer of the court, therefore the arraignment was invalid; ***IGP v Rossek***

2. Yes there was an obligation on the court when the defendant refused to plead. This is because the court ought to have enquired or investigated into the reason for the refusal to ascertain whether it was out of malice or visitation of God; ***Gaji v State;; Yesufu vState***
3. There is no implication if the prosecution decides to call three (3) out of the ten (10) witnesses listed on the information. This is because the prosecution not bound to call any number of witnesses in prove of his case unless the offence is one that requires corroboration; **section 200 Evidence Act; *Adaje v State.*** However the prosecution is enjoined to always call the vital witnesses for example an eye witnesses as much as possible; ***Ogbodu vState***
4. The effect of the short ruling on the no case submission is that it makes the ruling invalid. This is because although a ruling on a no case submission should be brief, it should contain the decision of the court on the issues raised in the no case submission; ***Odojin Bello v***

State; Atano v. Attorney General Bendel; R v Ekanem. Therefore, the ruling will be set aside on appeal.

5. A defendant is entitled to adequate time and facility in order to prosecute his defence; ***section 36(6)(b) CFRN; Udo v State***, therefore he is entitled to reasonable adjournment to enable his counsel appear in court. In the instant case, the court was wrong to have refused to grant the adjournment.
6. A defendant has the right to remain silent during his trial; ***Igabele v State***. Although the prosecution may comment on the silence of the defendant, he is not allowed to suggest that by remaining silent, the defendant is guilty as charged.
In the instant case, the comment of the prosecution on the silence of the defendant was wrong.
7. The sentence for murder is death by hanging and not death by firing squad. Therefore, the sentence of the court in this case (i.e. death by firing squad) is not valid.

QUESTION 6

- a) One of the constitutional powers of the Attorney General of the Federation is the power to take over and continue any criminal proceedings at any stage before judgment; section 174 of the 1999 Constitution of Nigeria as amended. This power is absolute and cannot be challenged, ***Amaefule v State***. It was therefore proper for the Attorney General of the Federation to have applied to take over the prosecution of the defendants.
- b) The procedure for a valid arraignment is that the charge is to be read by the Registrar or any officer of the Court. The Legal Assistant to the judge is not an officer of the court and it was therefore wrong for him to have read the charge.
- c) The position of the law is that during arraignment where there are several counts/charges, each count/charge must be read separately and plea taken separately on each count; ***Ayinde v State***. In the instant case, it was improper for the charge to have been read in block and the plea also taken in block. The arraignment is invalid; ***Amachukwu v State***
- d) Under **section 306 of Administration of Criminal Justice Act (ACJA) 2015**, no application for stay of proceedings shall be entertained by the court. Therefore the judge was right to have refused the application for stay of proceedings.

e) The general rule is that an elevated judge from the High court or Federal High Court to the Court of Appeal may be allowed to continue to preside over the case in order to conclude same; **section 396(7)ACJA.**

The condition for the above is that the case must be part-heard (i.e. the defence must have opened its case). Therefore in the instant case, the request by the prosecution for the elevated judge to continue with the case was not proper since the matter cannot be said to be part- heard under **section 494 ACJA**