



**NIGERIAN LAW SCHOOL**

**BWARI - ABUJA**

**BAR EXAMINATION-PART II FINAL**

**CRIMINAL LITIGATION**

**TUESDAY, AUGUST 14, 2018**

**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(a) (COMPULSORY)**

Oguebego Ugo, Anyasador Auwulu and Ngadi Inadike were a gang of notorious criminals, terrorizing the Bosso Community in Minna, Niger State, Nigeria.

On June 5, 2018, the trio broke into the vault of Standard Express Bank, Bosso Road, Minna while armed with AK 47 rifles, and made away with the sum of #50,000,000 (Fifty Million Naira only). Police Corporal Sule Congo who was in charge of security at the bank was shot dead in the course of the operation by Ngadi Inadike.

While trying to escape arrest, they ran into a Police road block at Kusugugi Road, Minna, Niger State. The trio shot and killed the three Policemen Manning the

road block, namely: Sgt Ibrahim Talakiwa, Corporal Bokobin Ebube and Inspector Alhassan Johnson, all of Nigeria Police Post, Kusugugi Road, Minna, Niger State.

At Lapai near Minna, the trio while armed, entered into a Supermarket at No. 10 Canisters Street, property of Mallam Sadanki Maignaleri and forcefully removed a 43 inches flat screen Samsung Television. Oguebogo Ugo raped the sales attendant, Miss Rosemary Adam.

The Honourable Attorney-General of Niger State has sent the file to you, as a Principal State Counsel with an instruction to draft the charges.

Draft the charge(s)

## **THE LAW**

### **PENAL CODE LAW**

**SECTION 97(I):** Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall, where no express provision is made in this Penal Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted that offence.

**(2)** Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

**SECTION 286(I):** Whoever, intending to take dishonestly any movable property out of the possession of a person Without that person's consent, moves that property in order to take it is said to commit theft.

**SECTION 287:** Whoever commits theft shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

**SECTION 283:** Whoever commits rape shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

**SECTION 221:** Except in the circumstances mentioned in section 222 of this Penal Code, culpable homicide shall be punished with death:

- (a) if the act by which the death is caused is done with the intention of causing death;
- (b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause.

## **Robbery and Firearms (Special Provisions) Act Chapter R11 Laws**

### **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;

(11) "Offensive weapon" means any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, matchet, dagger, cudgel, or any piece of wood, metal, glass or stone capable of being used as an offensive weapon;

(11) "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;

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#### **QUESTION 1(b)**

**(b)** Assuming the defendants object to the charge on the ground that no leave was sought and obtained before the charge was filed, what submission will you make in response?

**(c)** Assuming the charge is amended in the course of trial, state the post amendment procedures the Court will adopt.

#### **QUESTION 2**

Cynthia Samson, Teko John and Lolly Tin were arraigned before the High Court of the Federal Capital Territory sitting in Kubwa upon a one count information of inciting public unrest in Bwari, culpable homicide punishable with death and causing mischief by fire. When the charges were read to the defendants, Teko John pleaded not guilty for himself and on behalf of Cynthia Samson because she could only understand Gbagi language while Lolly Tin kept mute.

The Court recorded a plea of not guilty for all the defendants. The trial went on in English despite the attention of the Court being drawn to the fact that Cynthia Samson only speaks Gbagi language.

The prosecution tendered a confessional statement allegedly made by Teko John wherein he stated that he, Cynthia John and Lolly Tin truly incited some traders at Kubwa to protest against the trade levy recently imposed at Bwari Area Council but they did not participate in any killing or setting any place ablaze. The statement was tendered without objection by Cynthia John and Lolly Tin. Teko John denied making the statement but the statement was however admitted by

the Court as binding on all the defendants with regards to the offence of inciting public unrest.

At the close of the prosecution's case, all the defendants informed the Court that they were resting their case on the prosecution's case. They were however convicted of inciting public unrest, culpable homicide punishable by death and causing mischief by fire.

**Now answer the following questions:**

**(a)** What possible objection would you raise to the Count of the information filed in this case? Should you, as Counsel for the defendant, have any objection on the face of the information, at what stage of the trial would you raise the objection?

**(b)** What is your reaction to the plea of Teko John for himself and on behalf of Cynthia Samson?

**(c)** Was the Court right in recording a plea of not guilty for Lolly Tin? Give reasons for your answer.

**(d)** Was the confessional statement of Teko John rightly admitted by the Court? Give reasons for your answer. What is the effect of the confessional statement on Cynthia Samson and Lolly Tin?

**(e)** What should the Court have done with regard to Cynthia Samson who speaks Gbagi language only?

**(f)** Differentiate between the defendants resting their case on the prosecution's case and a submission of no case to answer.

### **QUESTION 3**

Jude Osigbor and Charles Edwards were arrested on the 21st day of June, 2018 for the offence of house breaking and stealing. At the conclusion of investigation the Attorney General of Edo State applied to the Chief Judge of the state,

pursuant to Section 340(2) of the Criminal Procedure Law of the state for consent to file information.

The consent was denied on the ground that the proof of evidence did not disclose a prima facie case against the accused persons. Subsequently, the Attorney General brought a complaint against the accused persons.

Counsel to the two accused persons applied for bail orally on the ground that the offences are bailable and the accused persons are true children of God. The court refused the oral applications and directed counsel to apply formally.

At the commencement of trial, Counsel to the accused persons raised a preliminary objection on two grounds as follows:

- i. That the complaint was not properly before the court since consent was not obtained.
- ii. That the complaint was bad for duplicity since the offence of House Breaking and stealing were lumped together in the same count.

The Court overruled both objections. Charles pleaded guilty to a lesser offence of receiving stolen property but did not give evidence in his own defence. The prosecution rejected the plea of guilty to the lesser offence made by Charles and the trial judge ordered the prosecution to prove its case. The prosecution could not prove the case of house breaking and stealing.

In the course of the trial, Jude in his own defence testified that he was not involved in the house breaking and stealing. He also said that he could not have even thought of committing the offences of house breaking and stealing since he was a born again Christian. He also alleged that it was Charles who committed the offence. The trial judge held that based on the evidence before him, the two accused persons were not guilty of the offence charged, but guilty of the lesser offence of receiving stolen property. The two accused persons were each sentenced to two years imprisonment without option of fine. Thereafter, the Defence counsel made the following remarks; "This is not a true judgement. The court is biased. I will appeal against the judgment".

**Answer the following questions:**

1. When the State Chief Judge refused the application for consent in this case, was the Attorney-General right in filing a complaint in the same matter as an alternative?
2. Comment briefly on the first objection of the defence counsel that the complaint was not properly before the court, since consent was not obtained.
3. Was the defence counsel right on ground two of his preliminary objection that the complaint was bad for duplicity.
4. As a defence counsel in this case, react to the opposition by the prosecution that your oral bail application is incompetent since you must bring the application in writing.
5. Comment on the plea of not guilty entered by Charles to the offence charged but guilty to a lesser offence and its rejection by the prosecution and the eventual conviction by the Judge.
6. The defence counsel in this case has decided to appeal against the decision of the court, draft the omnibus ground of appeal.
7. Comment on the remarks of the defence counsel after the delivery of the judgment by the court.
8. The State High Court in this case rejected the application for consent on the ground that there was no prima facie Case against the accused persons; on what other grounds could such application be refused?

**SECTION B**

**PLEASE USE ANOTHER BOOKLET FOR THIS SECTION**

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

The Inspector General of Police (IGP) wrote a letter to Chief Toughguy Dogo, Honourable Member of the House of Representatives, inviting him to report within 48 hours at the Special Anti-Robbery Squad (SARS) in Asokoro in relation to allegations that he is the sponsor of a Cartel involved in arms dealing and drugs trafficking. Furious that he failed to show up, the IGP obtained a warrant for his arrest from the Chief Magistrate Court, Wuse, Abuja and personally issued a search warrant to search his house in Maitama, Abuja. Both warrants were executed at 2 am on Monday 6th August, 2018.

Since Hon. Toughguy Dogo was not at home his wife Fatima Dogo and aged mother Hajia Malina were arrested instead after they had been thoroughly searched by seargent Pius. However, 5 bottles of substances suspected to be codeine wee found in Toughguy Dogo's bedroom.

He was arraigned before the Federal High Court, Abuja on a one count charge of being in possession of drugs on Sunday 12th August, 2018 because of the urgency of the matter. Immediately the charge was read to Hon. Toughguy Dogo, his lawyer Olu Okeke raised the following objections to the trial.

- a. That the warrant of arrest issued by Chief Magistrate Court was invalid as the court does not have jurisdiction to try the offence.
- b. That the search warrant was not properly issued.
- c. That the time of execution of both warrants were illegal.

The judge overruled the objections on the ground that it was premature as the Defendant ought to have pleaded to the charge before such can be made. Hon. Toughguy Dogo pleaded guilty and the court immediately sentenced him.

**Answer the following questions:**



- (a) As prosecuting counsel, what will be your reply to the objections of the Defence to the trial.
- (b) Comment on the search and arrest of Fatima Dogo and Hajia Malima.
- (c) In your opinion, what steps should the court have taken after Toughguy's plea of guilty before convicting him?
- (d) Assuming you filed an application for the bail of Hon. Toughguy Dogo at the Federal High Court, state in sequence how to move the application before the court.
- (e) Comment on Hon. Touhhguy Dogo's arraignment on Sunday, 22th August, 2018.

## **QUESTION 5**

At the commencement of the case for the defence, it was discovered that one of the defence witnesses had been in court and had not gone out of court and out of hearing. The prosecution objected to the court receiving the evidence of such a witness for the defence but he was overruled. The defendants were later called to testify but they chose to make their statement from the dock. The prosecution counsel was called to cross examine them but he declined. The defence called two more witnesses and closed their case. The judge adjourned for the counsel to address him the next day.

On the adjourned date, the judge had already written his judgement and signed it, sentencing the defendants to 21 years imprisonment on the ground that ought to receive a stiffer penalty than 7 years prescribed for the offence. The judgement was delivered six months after counsel delivered their final addresses. The defence counsel immediately filed the notice of appeal at the High Court Registry.

Answer the following questions, supporting your answers with relevant statutory and/or judicial authorities where necessary:

- (1) Comment on the propriety of the procedure adopted by the court after amendment of the charge. Was the judge right in overruling the defence counsel?
- (2) Was the judge right in taking evidence of the defence witness who remained in court? Give reasons.
- (3) Comment on the election of the accused persons to give their statement from the dock. Was it proper for the prosecution to refuse to cross examine them? Explain
- (4) Was it proper for the judge to have written and signed his judgement before the final addresses of the counsel? What is the effect of delivering the judgement six months after the close of case by the parties? Explain.
- (5) Assuming the counsel for the defence wants to appeal against the sentence imposed on the accused persons, will he succeed? Explain.

## **QUESTION 6**

Almagarahi Kudus, Baldacci Brown and Abutabad Manitoba were arraigned for the offence of culpable homicide punishable with death before the High Court of the Federal Capital Territory Abuja on April 3rd 2018. The charge was read to them and they all pleaded not guilty. The third defendant refused the counsel assigned to him by the court. All efforts to allow a counsel to represent him failed despite his poverty.

Trial commenced and the prosecution called two witnesses. Thereafter, they were cross-examined and re-examined. The case was adjourned for continuation of trial and for the prosecution to call its last witness but before the next adjourned date the judge was elevated to the Court of Appeal.

An application to the Chief Judge, for the elevated judge to continue to preside over the case was refused, whereupon the trial started de novo and on 11th June, 2018 judgement was delivered acquitting the defendants. The prosecution, being

dissatisfied with the judgement, filed its Notice of Appeal on the 27th day of July, 2018, challenging the judgement on an omnibus ground.

**Answer the following questions:**

- (1) What procedure should the court adopt with regards to the third defendant who refused representation by a counsel?
- (2) Assuming the 1st defendant has conducted the examination-in-chief of his first witness, state the order of cross-examination and re-examination of the witness.
- (3) Comment on the propriety or otherwise of the refusal of the application for the elevated judge to continue to preside over the case. Give reasons for your answer.
- (4) Assuming the defendants were convicted, draft the death sentence.

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BAR PART 11 AUGUST 2018**

**SECTION A**

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

**IN THE HIGH COURT OF NIGER STATE  
IN THE MINNA JUDICIAL DIVISION**

**HOLDEN AT MINNA**

**CASE NO: HC/567**

**BETWEEN**

**THE STATE..... COMPLAINANT**

**AND**

**1. OGBUEBEGO UGO**

**2. ANYASADOR AUWULU**

**3. NGADI INADIKE .....ACCUSED  
PERSON**

**CHARGE 1**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at Bosso Road, Minna, in the Minna Judicial Division conspired to commit the offence of armed robbery contrary to **Section 97(1) of the Penal Code Law of Niger State. 2 MARKS**

**CHARGE 2**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at Bosso Road, Minna, in the Minna Judicial Division whilst armed with AK 47 rifles broke into the vault of Standard Express Bank and robbed the bank of the sum of N50,000,000(Fifty Million Naira) only and thereby

committed an offence of armed robbery punishable under **Section 2(a) of the Robbery and Firearms (Special Provisions) Act R11 LFN 2004. 2 MARKS**

### **CHARGE 3**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at No. 10 Canisters Street, Lapai near Minna, in the Minna Judicial Division whilst armed with AK 47 rifles entered a Supermarket and robbed the supermarket of a 43 inches flat screen Samsung Television property of Mallam Sadanki Maimaleri and thereby committed an offence of Armed Robbery punishable under **Section 2(a) of the Robbery and Firearms (Special Provisions) Act R11 LFN 2004. 2 MARKS**

### **CHARGE 4**

That you Ogbuebego Ugo on or about the 5th day of June, 2018 at No. 10 Canisters Street, Lapai near Minna, in the Minna Judicial Division raped Miss Rosemary Adam, the sales attendant in the supermarket and thereby committed an offence of rape punishable under **Section 283 of the Penal Code of Niger State. 2 marks.**

### **CHARGE 5**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at Bosso Road, Minna, in the Minna Judicial Division caused the death of Corporal Sule Dongo, a Police Officer by shooting him with a gun and thereby committed an offence of culpable homicide punishable with death contrary to **Section 221(a) of the Penal Code Law of Niger State. 2 MARKS**

### **CHARGE 6**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at Kusugugi Road, Minna, in the Minna Judicial Division while trying to escape arrest after an armed robbery operation caused the death

of Seargent Ibrahim Talakiwa who was Manning a road block by shooting him with a gun and thereby committed an offence of culpable homicide punishable with death contrary to **Section 221(a) of the Penal Code Law of Niger State. 2 MARKS**

#### **CHARGE 7**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at Kusugugi Road, Minna, in the Minna Judicial Division while trying to escape arrest after an armed robbery operation caused the death of Corporal Bokobin Ebube who was Manning a road block by shooting him with a gun and thereby committed an offence of culpable homicide punishable with death contrary to **Section 221(a) of the Penal Code Law of Niger State. 2 MARKS**

#### **CHARGE 8**

That you Ogbuebego Ugo, Anyasador Auwulu and Ngadi Inadike on or about the 5th day of June, 2018 at Kusugugi Road, Minna, in the Minna Judicial Division while trying to escape arrest after an armed robbery operation caused the death of Inspector Alhassan Johnson who was Manning a road block by shooting him with a gun and thereby committed an offence of culpable homicide punishable with death contrary to **Section 221(a) of the Penal Code Law of Niger State. 2 MARKS**

**Dated this.....day of August, 2018 ½ mark**

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**XYZ**

**Principal State Counsel**

**QUESTION 1(B)**

I wish concede to the objection of the defence counsel because the defect goes into the root of the case. The prosecution is advised to withdraw the charge and apply for leave to prefer the charge. AGF v. Dr. Clement Isong; Ikomi v. State; S. 185(b) CPCL Niger State.

(C)

- **Leave of court:** Application (by motion on notice) for leave of court to amend the charge. This can be oral or in writing. Oral is for clerical errors. The defence can object to the amendment. The court has discretion to grant or refuse the application for amendment.
- **Endorsement:** A note of the order for amendment shall be endorsed on the charge which in its amended form is deemed to be the original charge---  
**COP V ALAO, AMAKO V THE STATE**
- **Read and Explaining of the charge:** After the grant of application for amendment and the charges have been amended, the amended charges are to be read and explained to the defendant(s)/accused person(s)---  
**AYODELE V STATE.**
- **Afresh plea/consent:** After reading the new charge to the accused person, he takes his plea afresh---**ATTAH V STATE.** Where the defendant is to be tried in the magistrate court, and the accused has the right of election whether he should be tried before the court, a fresh consent must be obtained.
- **Readiness to be tried on the amended charge:** Thereafter, the court must ask the defendant whether he is ready to be tried on the amended charge. If the accused says he is not ready, the court shall consider his reasons.

- **Adjournment entitlement:** The defence counsel or prosecution can make an application (simple application not on motion) for adjournment. The party seeking adjournment is entitled to it if proceeding immediately with the trial on the amended charge will be prejudicial to him---**S. 36(6)(b) CFRN.**
- **Witness recall:** Either the prosecutor or accused person may call or recall any witnesses

## QUESTION 2

**Q. 2(a)** The objection I would raise is that the count is bad for duplicity. The three offences of inciting public unrest, culpable homicide punishable with death and causing mischief by fire are distinct offences, which should have been charged separately but in the same charge sheet. Instead of lumping them in the same count, there should have been three different counts for each of the identified offence- **R v. Ugo Chima 2 marks**

The objection must be raised immediately the charge is read to the defendants but before he takes his plea to the charge. **Section 221 ACJA**, which is applicable here.

(b) It was wrong for Teko John to plead for himself and on behalf of Cynthia Samson. Where two or more defendants are jointly charged, each defendant shall be called in turn to plead when the charge is read. See S. 217 (2) & (7) and 256(1) ACJA. Plea is personal. The plea entered by Teko John is invalid. **2 marks**

(d) Though Teko John denied making the confessional statement, Court was right in admitting it. This is because where a defendant denies making a confessional statement, it is still admissible but the court will consider the weight to attach to such evidence. Emmanuel **Nwaebonyi v. The State.**

Teko's confessional statement can only be used against him and not against Cynthia Loly Tin.-- **Otufale v. State; S. 29(1) Evidence Act, 2011.**



However, failure of Cynthia and Lolly to object to the admissibility of the confessional statement amounted to adoption of the statement. **S. 29(4) E.A 2011; Evbvomwan v. COP**

(e) The Court ought to have provided an interpreter for Cynthia at no cost, since the Court's attention was drawn to the fact that she speaks Gbagi language. **S. 272 (2) (a)&(3) ACJA and S. 36(6)(e) CFRN 2marks.**

(f) Where a no case submission is overruled, the accused is given leave to enter his defence. BUT where the accused rests his case on that of the Prosecution; the accused has no further opportunity of calling witnesses or to enter upon his defence. The only option available is to appeal against the decision of the court in the event it is a conviction---**ONAGORUWA V. STATE**. Resting case is used where defence alleges that there is insufficient evidence to warrant a conviction but no case submission is used where there is no prima facie evidence linking the accused person to the crime.

NB: even if a no case submission is overruled (only requires a prima facie case), the accused can still rest case on the case of the prosecution because of the requirement of proof beyond reasonable doubt to convict.

### **17QUESTION 3**

**1.** No. The Attorney General of Edo State was wrong in filing a complaint as an alternative when the state Chief Judge refused the application for consent in this case. House Breaking and Stealing being indictable offences cannot be brought by way of complaint.

**An indictable offence must be prosecuted by way of information. See S. 77 (b)(ii) CPL. 2 marks**

2. The first objection of the defence counsel will be overruled. The consent of the High Court Judge is not required to file a complaint. **See S. 77 (b)(ii) CPL; Aluko v DPP. 2 marks**

3. The second objection is wrong. Use of forms is an exception to the rule against duplicity. Under Form 16, 3rd Schedule to CPL, offences of house breaking and stealing can be charged together. **See Willie John v . state; S. 150 and 463 CPL. 2 marks**

4. An application for bail for non capital offences may be brought under section 118(2) CPL. Such Application need not be in writing. Where the offence is a misdemeanor or simple offence, or where the offence is ordinary bailable, the Court shall grant bail. Since the charge is for house breaking and stealing, the court can grant bail based on an oral application. **See Olawoye v. COP; Abiola v. FRN. 2 marks**

5. The defendant may plead not guilty to an offence charged but plead guilty to a lesser offence not charged. **See S. 219 CPL.**

The general rule is that the prosecutor must consent to the conviction of the accused for the offence he had been charged with but to evichyhe pleaded guilty before the Court can proceed to convict him on the lesser offence. The Judge was wrong in convicting the defendant of the lesser offence to which the prosecutor had earlier withheld his consent. **2 marks**

6. **The decision is unreasonable and cannot be supported having regard to the evidence. 2 marks**

7. The remark of the defence counsel was disrespectful of the court and a breach of the duty to treat the Court with dignity and honour. **See R. 30 RPC . 2 marks**

8. Other grounds upon which the judge may withhold consent to the information is where proof of evidence is not attached. **See Suleiman v. COP; Abacha v. State. 1 mark**

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**SECTION A**

**QUESTION 4**

(a)(i) My reply to the 1st objection would be that the submission of the defence counsel is wrong. Reason being that a magistrate has the jurisdiction to issue a warrant of arrest against any person suspected to have committed an offence under section 36(1) & 39(2) of the ACJA, 2015 which is the applicable law in this case.

(ii) My reply to the 2nd objection is that the defense counsel is right in his submission. This is because the search warrant issued by the IGP was invalid. A superior Police Officer can only issue a search warrant in respect of the following offences:

Any premises in occupation of a person convicted of receiving stolen property or harbouring thieves or of any offences involving fraud or dishonesty. **Section 28(1) & (3) Police Act.**

(iii) On the issue of the time of execution, the objection of the defence counsel cannot stand as under **Ss. 43(2) of the ACJA, 2015**, a warrant of arrest and a search warrant can be executed at any time of the day. **5 marks**

(b) The search of Fatima Dogo and Hajia Malima by seargent Pius was totally wrong. This is so because under the provisions of **S. 9(3) of the Administration of Criminal Justice Act, 2015**, a person shall be searched by the person of his own sex with strict regard to decency except in extreme circumstances, which does not apply in this case. Also, the arrest of the duo in place of Chief Toughguy Dogo was equally wrong as arrest in lieu of suspect is prohibited under **S. 7 ACJA, 2015**. **5 marks.**

(c) The court should take the following steps before convicting Toughguy Dogo on his plea of guilty.

(i) The Court should record the plea of the defendant as clearly as possible in the language/words used by him.

(ii) The prosecution shall, state all the facts and essentials of the offence and charge against him.

(iii) The court should then satisfy itself that the defendant understands the charge against him.

(iv) The Court should ensure that the plea of the defendant was clear and unambiguous and constitute an admission of the offence charged.

(v) Expert evidence must be brought by the prosecution to establish that the substances found at Toughguy Dogo's house were codeine Drugs. **Stevens v. Police. 5 marks**

**(d)(i)** Defence counsel to announce appearance for the applicant

(ii) Introduce the nature of the application and mention the date of filing same in court.

(iii) Seek the indulgence of the Court to allow for the moving of the application.

(iv) Call the attention of the Court to the affidavit in support and the annexure thereto, if any, and place reliance on the same in moving the application.

(v) Mention the prayers/orders from the Court

(vi) Refer to and adopt the written address filed in support of the application as stated on the motion paper and prays the court to grant the bail application on liberal terms. **5 marks.**

**(e)** The arraignment of Hon. Toughguy Dogo on Sunday, 12 August, 2018 was invalid. This is because Sunday is not a juridical day and the court is only allowed to sit on juridical days. The court can only sit on non-juridical days with the consent of the parties. **See Ososanmi v. COP. 5 marks**

## **QUESTION 5**

**1.** The law allows amendment of charges before plea or after plea. In either case, certain principles govern them. In this instance, the charge was amended after the plea of the defendants has been taken; the procedure to be followed as laid down in **Sections 156 and 157 ACJL** are as follows:

**(I)** Read and explain the amended Charge to the accused to take a fresh plea -**S.163 & 164 CPA; S. 208 (2) CPC Youngman v. C.O.P156 ACJL**

**(II)** Seek the consent of the accused to elect whether or not to proceed to trial-**S.156(1)2 ACJL**

**(III)** Court endorses the order of amendment on the new charge showing date of amended charge-**S.164(4) CPA.**

**(IV)** Both parties are entitled to adjournment-if it will be prejudicial to them-S. **164 (1) (2) (3) CPA, Ss. 209 & 210 CPC; S.156(3) ACJL**

**(V)** Inform the accused of his right to call or recall any witnesses except where he is represented by counsel.**Onwuguzo v. C.O.P ; Shoaga v. R.- S.165CPA; S.211 CPC; S.157 ACJL.**

**2.** Yes, the judge was right in taking the evidence of the defence witness who remained in court. See **the proviso to Section 285(3) CPL; Section 238 ACJL;**

**Falaju v. Amosu; Uwaezuoke v. Commissioner of Police.** Staying in court as a witness when others are asked to leave affects only the weight to be attached to the witness' testimony and not the admissibility . **3 marks**

**3.** Where the defendant enters his defence, he has 3 options: he may make a statement from the dock, he may move to the witness box, he may keep quiet. Where, as in this case, he chooses to make a statement from the dock, he cannot be sworn and is therefore not liable to cross examination. **See S. 287(1)(a) of the Criminal Procedure Law; S. 240(1)(a) ACJL . 3 marks**

**4.** It is not proper for a judge to have written and signed his judgement before the final addresses. A trial judge is empowered to write his judgement at the close of parties' evidence before listening to final addresses of parties, the Judge is precluded from signing or delivering such judgement until after final addresses have been made. **See Section 241 of the Criminal Procedure Law; S. 269 ACJL.**

The effect of delivering a judgment 6 months after close of case by parties will depend on whether a miscarriage of justice has been occasioned. Ordinarily, a judgment should be delivered within 90 days of close of case or final addresses. Delivering judgement outside 90 days would make the judgement suspect, but not void because of the provisions of Section 294(5) of the 1999 Constitution. But if it is shown that there has been a miscarriage of justice, the judgement will be set aside. **3 marks.**

**(5) The position of the law is as follows:**

- i. Where a law provides a mandatory punishment, a court must impose it.
- ii. Where a law provides minimum punishment, a court cannot go below it.
- iii. Where a law provides maximum punishment, a Court cannot exceed it, but may impose lower punishment. See *Balogun v. AG. Ogun State*

The court exceeded its jurisdiction by imposing a sentence that is greater than that provided by law for the offence. Therefore, counsel for the defence is likely to succeed on appeal. **3 marks**

**Total: 15 marks**

## QUESTION 6

1. The 3rd Defendant Abutabad Manitoba must be represented by counsel as he is standing trial for capital offence. **See S.267(1) ACJA.**

However, having refused the counsel assigned to him by the court, the court is only:

- (a) Minded to inform him of the risk of defending himself in person in a capital offence;
- (b) Inform him of all his rights under the 1999 Constitution of the Federal Republic of Nigeria;
- (c) Indicate the fact of having so informed the defendant on the record and proceed with the trial. **See 267(4) and 349(6)(a)(b) ACJA . 4 MRKS**

2. In the scenario the Defendants are represented by different Counsel, the order of cross-examination after 1st Defendant has concluded the examination-in-chief of the first witness will be:

- (a) 2nd defendant will cross-examine the witness;
- (b) 3rd defendant will cross-examine the witness;
- (c) The prosecution will cross-examine the witness;
- (d) The 1st Defendant will then have the right to re-examine his witness. **See generally S. 217 Evidence Act. 4 marks**

3. The general rule is that an elevated Judge from the High Court to the Court of Appeal may be allowed to continue to preside over the case in order to conclude same. **See S. 396(7) ACJA 2015**

In the circumstances of this case, the refusal of the application for the elevated judge to continue to preside over the case was in order because by Section **494 ACJA**, the case cannot be regarded as a " part-heard" case. **4 marks**

4. "The sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection ". **See S. 402(2) ACJA 2015 -----3 marks**