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FIRST YEAR SUPPLEMENTARY EXAMINATIONS

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CRIMINAL PRACTICE AND PROCEDURE

(Monday, August 13, 1990)

Instructions to Students

- a) Time: 3½ hours
  - b) Answer FIVE questions
  - c) In answering any question a student may reply by reference to the law of any Commonwealth Caribbean Territory, but must state at the beginning of the answer the name of the relevant territory.
  - d) It is unnecessary to transcribe the questions you attempt.
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1990 Supp

QUESTION 1

During the night of February 10, 1990, Robman and Nawaz entered the dwelling house of Rushdie by breaking a window.

Rushdie had retired to bed, having first secured all the doors and windows of his house. Robman put a knife to the throat of Rushdie and said "Give me the key to the vault." Rushdie screamed and his boarder, Kray, a policeman, came to his rescue. He held and disarmed Robman.

Nawaz stabbed Kray in the back thereby forcing him to release his partner in crime. The two intruders then rushed from the house and disappeared in the dark.

A few days later Robman and Nawaz were detained by the police and subsequently identified by Rushdie and Kray at identification parades.

Draft the indictment to be presented in the Supreme Court/ High Court.

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QUESTION 2

Sappleton was charged with importing 1.87 kilogrammes of crack in false compartments of a holdall. It was alleged by the prosecution that he had been engaged in a joint enterprise with two others who had met him at the airport and who had organised and financed the drugs run.

The issue at the trial was whether the accused had known of the presence of the drug in the holdall. The prosecution placed much emphasis on the obvious weight change which the addition of the drug would have made on the flimsy holdall, but the accused denied awareness of any such weight difference.

After retirement, the jury wrote a note asking "please could we have scale or similar weighing equipment to help us clarify how much difference the weight of the crack would make?" Counsel for the Crown and counsel for the accused agreed to this request being complied with. The judge directed that the scale be provided after warning

the jury to be cautious about experiments and speculation about weight differences.

After retiring with the scales, the jury returned a unanimous verdict of guilty within about 40 minutes.

Sapleton wishes to know whether or not he has a good ground of appeal. Advise him.

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QUESTION 3

W was on trial for robbery with aggravation. The judge had not completed directing the jury when the court adjourned overnight. In the morning before the court resumed the judge was informed in his chambers that a juror on the telephone was asking to be excused because her husband had died during the night and the judge thereupon discharged her. The judge said nothing about this when the court resumed.

The summing up was completed, the jurors retired and returned a verdict of guilty, counsel being aware that only six jurors were present. W was sentenced.

Write an opinion as to the propriety of the judge's exercise of his discretion to discharge the juror.

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QUESTION 4

John Stokes was indicted before the magistrate for wounding (count 1) and malicious damage to property (count 2). He was convicted on count 1 and acquitted on count 2.

After sentence was passed on count 1 it was brought to the attention of the magistrate that the virtual complainant in respect of both counts had neither taken the oath nor affirmed. Thereafter the magistrate recalled the case and was about to hear evidence afresh when counsel for Stokes entered pleas of autrefois acquit and convict.

Advise the magistrate.

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QUESTION 5

Write notes on THREE of the following:

- (a) Joinder of offences in one indictment
  - (b) Calling evidence in rebuttal
  - (c) Subpoena duces tecum
  - (d) ( i) Procedure on information charging an indictable offence in the Resident Magistrates' Court (Jamaica); or  
(ii) The laying of an information/charge
  - (e) Abandonment of appeal and its withdrawal .
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QUESTION 6

Indicate the courses open to an accused on arraignment in the Supreme Court/High Court and comment on any three.

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QUESTION 7

An Act provides that "parking a vehicle elsewhere than in a place provided for that purpose or otherwise than in the manner required by an authorised officer" is prohibited. The Act further provides that anyone who contravenes any such prohibition shall be guilty of an offence punishable summarily.

An information charged Dormo that he on the 10th day of January 1990 in the parish of St. Mary unlawfully parked a motor vehicle elsewhere than in a place provided for that purpose and otherwise than in a manner required by an authorised officer.

Write an opinion as to whether or not this charge is bad for duplicity.

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QUESTION 8

Uriah and Modeste, when arraigned, pleaded not guilty to a charge of murder preferred against them. The jury were then sworn and both accused were put in their charge. At the close of the case for the prosecution, the accused were informed of the three courses that were open to them to adopt whereupon they both replied that they wished to change their pleas to guilty of manslaughter. The trial judge agreed to accept the pleas and proceeded to sentence each accused to five (5) years hard labour. He thereafter discharged the jury.

When the trial judge returned to his chambers, his clerk informed him that he did not put the allocutus to the accused. The trial judge immediately gave instructions that all parties including the accused and the jury return to the court. He then put the allocutus to the accused. They both said nothing. The trial judge thereupon informed the accused that the sentences would stand.

Uriah and Modeste seek your advice with regard to the procedure adopted by the trial judge at the trial and as to whether they can successfully appeal against their convictions and sentences.

Advise them.

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