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NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION  
LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1989

CRIMINAL PRACTICE AND PROCEDURE

(Monday, May 29, 1989)

Instructions to Students

- a) Time: 3½ hours
  - b) Answer FIVE questions only.
  - c) In answering any question a candidate 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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QUESTION 1

During the night of February 10, 1989, 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 after, 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

Archer and Selmes were indicted for murder. On January 10, 1989, the jury found Archer guilty of manslaughter and Selmes guilty of murder. Archer was sentenced to imprisonment for life and Selmes to death.

On January 13, 1989, Archer filed a notice of appeal against conviction and sentence. On January 16, 1989, Counsel advised Archer against pursuing the appeal.

As a consequence, two days later, Archer filed with the Registrar, a notice of abandonment of his appeal. However, on the following day (the 19th) Archer was advised by a Senior Counsel that he had a good ground of appeal.

The confused Archer on the same day, hurriedly sent another notice of appeal to the Registrar in which he stated that he found it necessary to re-open the appeal and was therefore withdrawing the notice of abandonment.

On January 30, 1989, Selmes, who after the verdict, had been suffering from acute depression, filed a notice of intention to apply for an extension of time within which to appeal his conviction.

They both seek your advice as to the likelihood of their appeals being heard.

Advise them.

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QUESTION 3

On January 10, 1989, John Marsh deliberately drove his car into that of James Harward, a friend of his former common-law wife.

Five days later, Marsh feloniously wounded Patsie, who had accused him of being insanely jealous over his former common-law wife.

Three weeks after the latter incident, Marsh threw stones at the house of James Harward, smashing a window and some of Harward's furniture. The damage to the window and furniture amounted to \$1,500. Marsh was committed to stand trial in the Supreme Court/High Court.

It is proposed to prefer an indictment against him for:

Dangerous driving	-	Count 1
Felonious wounding	-	Count 2, and
Damaging property	-	Count 3.

Marsh wants to know if the joinder of the three counts in one indictment is proper.

Advise him. Give reasons.

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QUESTION 4

Housen and Shaw were charged with larceny (a felony) and conspiracy to steal (misdemeanour). At the trial two witnesses from abroad were called to give evidence.

On the second day of the trial, Housen was absent. His Counsel informed the Court that Housen was ill and could not attend Court. He therefore applied for an adjournment. Counsel for the Prosecution opposed the application saying that the witnesses would be leaving the island the following day and it might not be possible to secure their attendance on any future date. The Judge refused the application for adjournment and the trial continued in the absence of Housen but with his Counsel present.

On the fifth day of trial, Housen was present. However, Shaw who was on bail did not appear. The Judge issued a warrant. He was still absent the next day. Counsel for the Prosecution said that the trial should continue. Defence Counsel then called for a new trial. The Judge ruled that the trial should go on in the absence of Shaw. Defence Counsel withdrew from the trial. Housen and Shaw were convicted. They appealed on the ground that the Judge was wrong on both occasions to allow the trial to continue.

Advise them as to their chances of success on appeal.

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QUESTION 5

Write notes on three of the following:

- (i) calling evidence in rebuttal;
  - (ii) fitness to plead;
  - (iii) appeal from conviction in Supreme Court/High Court;
  - (iv) autrefois acquit and pardon;
  - (v) challenge to the jury for cause.
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QUESTION 6

Answer either (a) or (b).

- (a) Write notes on four of the major procedural differences between felonies and misdemeanours.
- (b) Write notes on:
- (i) procedure on information charging an indictable offence in the Resident Magistrate's Court, and
  - (ii) the rule against duplicity.

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QUESTION 7

Saunds was indicted for murder. The jury retired at 11.30 a.m. to consider their verdict - murder and manslaughter - having been left for their consideration.

The jury returned at 12.25 p.m. and asked the trial Judge to repeat his direction on provocation. The Judge obliged and the jury went back. The jury then returned at 1.00 p.m. They made it quite clear that they could not agree upon murder but that they probably would agree on manslaughter.

The Judge discharged them from their obligation of returning a verdict on the major offence, repeated his direction on provocation and sent them back to consider manslaughter. They returned at 1.30 p.m. Their verdict was then taken on manslaughter. By a majority of 11:1, Saunds was found guilty. He was sentenced to five years imprisonment and now wishes to know whether or not the Judge erred in discharging the jury as he did and then proceeding to accept the manslaughter verdict.

Advise Saunds.

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QUESTION 8

B was charged on an indictment for murder. The trial began in the St. Ann Circuit Court before a jury of twelve persons and Mr. Justice Quick.

On the first day, two witnesses for the prosecution gave evidence. On the morning of the following day, the No. 5 juror, Miss Hall, was absent. The Court adjourned a short while to await her arrival. When the Court resumed at 11.30 a.m. she was still absent. There was a discussion in open Court as to whether or not the trial should proceed without her.

Counsel for the Crown was of the view that the trial should proceed with eleven persons. So did Counsel for the defendant. The trial proceeded with eleven jurors. No note was made of any formal discharge or of the ground on which the trial was proceeding with eleven jurors only.

During the afternoon at around 2.30 p.m., at the close of the evidence of the third witness, the following note was made on the record:

" Foreman of the jury makes apology on behalf of No. 5 juror, Miss Hall, for not turning up in time. She claimed she lives far from the Court and could not get early transportation. Juror informs Court that she was in a long line waiting for transportation. Excuse accepted. Juror told that she is excused for the remaining part of the case."

The trial went on. It lasted for three days. The eleven jurors unanimously found B guilty of murder. He was sentenced to death.

He has now appealed and wishes to know if the trial Judge was right in continuing the case with eleven jurors only.

Advise him.

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