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FIRST YEAR EXAMINATIONS, 1990

CRIMINAL PRACTICE AND PROCEDURE

(Monday, May 28, 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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QUESTION 1

On the 10th of January 1990, Mr. Jewell missed from his store three (3) expensive rings. The police were called in. On the 24th of January 1990, the police acting on information received, obtained a search warrant and went to the home of Furtum. The warrant was read to him, thereafter the police proceeded to search the room occupied by Furtum. In a drawer the police found two gold rings.

Furtum was questioned about the rings. In answer to a question put by Constable Quiz, Furtum said he bought the rings whilst on King Street from a man whom he did not know. When asked how much he paid for them, he refused to answer.

The rings were positively identified by Mr. Jewell as the rings he had missed from his store.

Furtum was arrested and charged.

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

QUESTION 2

J, on trial for murder, changed his plea to one of guilty of manslaughter. His plea was accepted by the trial judge and the prosecution.

The judge directed the jury to find J not guilty of murder but guilty of the admitted manslaughter. The jury however, had their own ideas and made it clear they did not consider J guilty of either crime. The judge sent them to their room to consider. In spite of being sent back to their room three times the jurors refused to find J guilty of the admitted charge.

When the jury came back into court one of them told the judge:

" The only reason he has pleaded guilty to manslaughter is out of remorse. If you send this man to prison it will ruin his family. "

Finally the judge discharged them from giving any verdict and treated the case as a straightforward plea of guilty awarding J a two-year suspended sentence.

Write an opinion as to whether or not the course taken by the judge was proper.

QUESTION 3

Porthouse was charged with an offence under the Road Traffic Act. The first Information was defective in that it charged an offence under section X of the Act but the particulars of offence combined sections X and Y of that Act.

An alternative Information was substituted before the magistrate at a later date. An earlier plea of not guilty had been taken on the first Information and a similar plea was entered on the second.

The prosecutor elected to proceed on the second Information and offered no evidence on the first which was accordingly dismissed.

Counsel for the accused then submitted that the second Information should also be dismissed on the *autrefois acquit* principle since the charges were the same or substantially the same. Counsel for the prosecution argued that it was not open to the magistrate to dismiss the Information before evidence had been heard in relation to either Information.

Advise the magistrate.

QUESTION 4

An indictment was presented against F in the Supreme Court/High Court charging him with larceny of a cheque drawn on a bank for \$10,000 and payable to G. Before F was arraigned, counsel for the prosecution applied to amend the indictment by adding a second count for receiving stolen goods, to wit the abovementioned cheque.

Counsel for the accused indicated that he was taking no objection provided counsel for the prosecution prepare a new indictment embodying the new count. Counsel for the prosecution did not do this but instead the additional count was written on the last page of the original indictment and the trial judge allowed the trial to proceed on the indictment as amended.

The accused was convicted on the count of receiving stolen goods whereupon counsel for the accused moved in arrest of judgment and verdict of the jury. The trial judge declined to grant the motion and proceeded to sentence F.

F wishes to appeal. Advise him as to whether or not he has any good ground of appeal.

QUESTION 5

Ali was indicted for larceny and receiving. The same goods were the subject of each of the counts which were laid in the alternative. The jury were directed that if they convicted Ali of larceny they need not consider the count of receiving since they were "alternative counts, and indeed, alternative as between themselves." When the jury returned to the court they were asked by the clerk to reply "yes" or "no" to the question whether a unanimous verdict had been reached in regard to the two counts. On the reply of the Foreman, "guilty", the clerk asked: "On which count do you find him guilty?" The Foreman replied "On both counts." Questioned by the judge the Foreman said they found Ali guilty of both counts.

The judge did not explain that that was contrary to his direction.

Ali was sentenced to two (2) years imprisonment on the first count and admonished and discharged on the second.

Ali wishes to know whether or not there was an irregularity and if so its likely consequence. Advise him.

QUESTION 6

Write notes on THREE of the following:-

- (a) Fitness to plead
- (b) Challenge to the jury for cause
- (c) Motion to quash
- (d) Ordering of a new trial by the Court of Appeal

QUESTION 7

Answer either A or B

A. Discuss:

- (i) The right of an accused to be present in court during his trial, and
- (ii) Summary proceedings.

B. Discuss four of the major procedural differences between felonies and misdemeanours.

QUESTION 8

At the close of the addresses of counsel for the defence and for the prosecution, the trial judge considered that despite the conflict of evidence between two material witnesses, the evidence as a whole led by the prosecution, remained unshaken and uncontradicted and established the guilt of the accused beyond a reasonable doubt. He thereupon directed the jury to return a verdict of guilty in respect of the accused. After the jury returned the verdict of guilty as directed, the trial judge proceeded to sentence the accused to five (5) years imprisonment. Thereafter he discharged the jury.

The accused is dissatisfied with the procedure adopted by the trial judge and wishes to appeal against his conviction and sentence.

Advise him as to the steps he should take to prosecute his appeal and as to his chances of success.
