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LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1988

CRIMINAL PRACTICE AND PROCEDURE

(Friday, May 27, 1988)

Instructions to Students

- a) Time: $3\frac{1}{2}$ hours
 - b) Answer any FIVE questions
 - 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

Jona and Batman were seen by Constables Alert and Quick running from a bank towards a car which they entered. Two other persons Crook and Whiteman were in the car. The car drove off with Crook behind the steering wheel. Constable Alert shouted "Police stop." Jona pointed a firearm at Alert and Quick and fired two shots. The Constables flung themselves to the ground and returned the fire. The car sped away and crashed into another car. All four occupants ran from the car. Alert and Quick gave chase and as they did so Batman fired two shots at them. The hot pursuit continued and with the help of other policeman, all four men - Jona, Batman, Crook and Whiteman were held.

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

QUESTION 2

W. was tried and convicted by a jury for house-breaking and larceny. According to police evidence, which W. denied, he was pushing a wheelchair covered with a jacket on which the stolen things were being transported. W. and another man ran away when police approached and the wheelchair fell over spilling its contents.

The judge midway through his summing-up adjourned the trial overnight. On the following day he received a note from a juror revealing that the juror had knowledge of where the wheelchair might have come from.

The Judge and counsel on both sides agreed that the piece of knowledge was immaterial to the issues in the case. The judge summoned the juror to court, and in the absence of the other jurors instructed

him that the circumstances surrounding the wheelchair had not been canvassed and were irrelevant and that it was not a matter which should to be disclosed to the other members of the jury. Thereafter the judge completed his summing-up.

W. having been convicted, wishes to know whether an irregularity had occurred and if so what are his chances on appeal.

Advise him.

QUESTION 3

J and F were charged with conspiracy to steal and with larceny. At the trial, two witnesses from abroad were called to give evidence. On the second day of the trial J was absent. His counsel informed the Court that J was ill and could not attend court. He therefore applied for an adjournment. Counsel for the prosecution opposed the application saying that the witness 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 J but with his counsel present.

On the fifth day of the trial J was present. However F who was on bail did not appear. The judge issued a warrant. He was still absent the next day. Defence counsel called for a retrial. Counsel for the prosecution said the trial should continue. The judge ruled that the trial should go on in the absence of F. Defence counsel withdrew from the trial. J and F were convicted. They appealed on the ground that the judge was wrong on both occasions to allow the trial to continue.

Advise J and F as to their chances of success on appeal.

QUESTION 4

Write notes on any three of the following:

- (a) the procedure when an accused on arraignment stands mute;
 - (b) Demurrer;
 - (c) Motion to quash Indictment;
 - (d) Special pleas in bar.
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QUESTION 5

Your client who is charged for murder seeks your advice as to his general 'right to challenge' during the empanelling of a jury.

Advise him.

QUESTION 6

Douglas purchased two tyres from Francis and with Francis' permission left the tyres at the latter's garage.

Rock removed one of the tyres from the garage and when accosted said he did so with Francis' consent. When the police contacted Francis he denied consenting to Rock removing the tyre. Rock was charged with larceny of the tyre. At his trial in the Magistrate's Court, the prosecution did not call Francis. After the close of the defence in which Rock maintained that he removed the tyre with Francis' consent, the Magistrate directed that Francis be called as a witness.

Francis was called and in his evidence denied Rock's allegation. Rock was convicted and sentenced. He wishes to appeal and wants to know:

- (a) If he has a good ground of appeal;
- (b) What steps must he take to institute the appeal.

Advise him.

QUESTION 7

(a) In what circumstances may a judge refuse to accept the first verdict of a jury?

(b) Oakwell was charged on an indictment containing three (3) counts, the first two counts charged him with wounding with intent and the third with illegal possession of firearm. Evidence in respect of the second and third counts was given by a constable who testified that Oakwell had fired a shot wounding him and he in turn shot Oakwell causing him to fall. He then removed from Oakwell's hand a revolver, the subject matter of the third count.

The jury returned unanimous verdicts of not guilty on the counts charging wounding with intent and a unanimous verdict of guilty on the third count.

The trial judge refused to accept their verdicts and sent them back to reconsider.

Following a second retirement, the jury returned majority verdicts of guilty on all counts. The accused was sentenced. He now wants to know whether or not it was open to the trial judge to refuse to accept the original verdicts of the jury.

Advise him.

QUESTION 8

Stanley was charged, inter alia, with larceny. The case against him was that he had removed a pair of curtains valued \$300, from the home furnishing section of a department store and had taken them straight to the customer refund desk, claiming that he had bought them at the store the previous evening and was therefore entitled to a refund.

There was no relevant entry in the till rolls of the furnishing section and he did not have a receipt.

After the close of the prosecution case, the defendant in giving evidence, said for the first time that he had not paid for the curtains in the furnishing section, but at a till near the entrance of the store. At the end of the defence case, the prosecution was granted leave to adduce evidence in rebuttal relating to the relevant till rolls, which showed that no purchase price of \$300 had been made.

Stanley was convicted and appealed on the ground that the trial judge was wrong to admit the rebutting evidence.

Write an opinion as to his chances of success on appeal.
