

CHAPTER 113A

CRIMINAL APPEAL

1981-14

This Act came into operation on 1st September, 1983 by Proclamation (S.I. 1983 No. 101).

Amended by:

2000-5

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

2002

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 113A

**CRIMINAL APPEAL
1981-14**

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**BARBADOS**

CRIMINAL APPEAL

1981-14

An Act to provide for appeals in criminal cases to the Court of Appeal and to Her Majesty in Council.

[Commencement: 1st September, 1983]

CITATION

Short title

1. This Act may be cited as the *Criminal Appeal Act*.

INTERPRETATION

Definitions

- 2.(1) In this Act

“appeal” means an appeal by a person convicted upon indictment;

“appellant” means the person making an appeal, and includes a person who has given notice of application for leave to appeal;

“Court” means the Court of Appeal;

“court of trial”, in relation to an appeal, means the court from which the appeal lies;

“person of unsound mind” means a person suffering from mental disorder as defined by the *Mental Health Act*, Cap. 45;

“Registrar” means the Registrar of the Supreme Court;

“sentence” includes

- (a) any order of the High Court made on conviction with reference to the person convicted, or his wife or children;
- (b) any recommendation of the High Court as to the making of a deportation order, or a restriction order or of an expulsion order in the case of the person convicted,

and “sentencing” has a corresponding meaning.

[2000-5]

(2) The power of the Court to pass sentence includes power to make any order or recommendation that could lawfully have been made by the court of trial.

PART I

CRIMINAL APPEALS FROM HIGH COURT

Right of appeal

3.(1) A person convicted of an offence on indictment may appeal to the Court against his conviction.

(2) An appeal to the Court is without leave of the Court when

- (a) it is an appeal on any ground that involves a question of law alone; or
- (b) the judge of the court of trial grants a certificate that the case is fit for appeal on a ground that involves a question of fact or a question of mixed law and fact, or on any other ground that appears to the judge to be a sufficient ground of appeal.

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- (3) An appeal to the Court is with leave of the Court when
- (a) it is an appeal on a ground that involves a question of fact alone or a question of mixed law and fact; or
 - (b) it is an appeal on any other ground that appears to the Court to be a sufficient ground of appeal; or
 - (c) it is an appeal against the sentence passed on conviction, not being a sentence specifically fixed by law.

Grounds for allowing appeal under section 3

4.(1) Except as provided by this Act, the Court shall allow an appeal against conviction where the Court is of the opinion

- (a) that the verdict of the jury should be set aside on the ground that under all the circumstances of the case the verdict is unsafe or unsatisfactory; or
- (b) that the judgment of the court of trial should be set aside on the ground of a wrong decision on any question of law; or
- (c) that there was a material irregularity in the course of the trial,

and in any other case the Court shall dismiss the appeal.

(2) The Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) Subject to section 15, in the case of an appeal against conviction, the Court shall, if it allows the appeal, quash the conviction.

(4) An order of the Court quashing a conviction, except when under section 15 the appellant is ordered to be retried, operates as a direction to the court of trial to enter a record of acquittal instead of the record of conviction.

Alternative offence, sentence

5. Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence and on the finding of the jury it appears to the Court that the jury must have been satisfied of the facts that proved the appellant to be guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, replace the verdict found by the jury by a verdict of guilty of that other offence, and thereupon, if the sentence is not one of greater severity pass such sentence in substitution for the sentence passed at the trial as is authorised by law for that other offence.

When appeal allowed in part

6. Where, on an appeal against conviction on an indictment that contains 2 or more counts, the Court allows the appeal in respect of part of the indictment,
- (a) except as provided in paragraph (b), the Court may, in respect of any count on which the appellant remains convicted, pass such sentence in substitution for any sentence passed thereon at the trial as the Court thinks proper and that is authorised by law for the offence of which the appellant remains convicted on that count;
 - (b) the Court may not under this section pass any sentence the result of which would cause the appellant's sentence on the indictment as a whole to be of greater severity than the sentence, taken as a whole, passed at the trial for all offences of which the appellant was convicted on the indictment.

Conviction on special verdict

7. Where a special verdict had been found by a jury, then on an appeal against conviction, if the Court considers that a wrong conclusion was arrived at by the court of trial regarding the effect of the jury's verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict; and the Court may pass such

sentence in substitution for the sentence passed at the trial as may be authorised by law.

Finding of insanity substituted

8.(1) Where on an appeal against conviction the Court is of the opinion that, although the appellant did the act or made the omission charged against him, he was of unsound mind at the time the act was done or the omission was made, so as not to be responsible for his actions, the Court may

- (a) quash the conviction, and direct that a finding of not guilty, on the ground of insanity, be entered; and
- (b) quash the sentence passed at the trial, and shall order him to be detained in a mental hospital until Her Majesty's pleasure is known;

and thereupon the Governor-General on behalf of Her Majesty may give such order for his safe custody during such detention as the Governor-General thinks fit.

(2) Section 13(2) of the *Mental Health Act*, Cap. 45 applies to a person ordered to be detained under this section as it applies to a person ordered to be detained under section 13(1) of that Act.

Finding of not guilty on grounds of insanity

9.(1) A person in whose case a finding by a jury is recorded that he is not guilty of the offence charged on the ground of insanity, may appeal against that finding to the Court

- (a) without leave of the Court
 - (i) on any ground that involves a question of law alone; or
 - (ii) if the judge of the court of trial grants a certificate that the case is fit for appeal, on a ground that involves a question of fact or of mixed law and fact or on any ground that appears to the judge to be a sufficient ground;

(b) with the leave of the Court

- (i) on any ground that involves a question of fact alone or a question of mixed law and fact; or
- (ii) on any other ground that appears to the Court to be a sufficient ground of appeal.

(2) On an appeal under this section the Court shall, subject to subsections (3) and (4), allow the appeal if it is of the opinion that

- (a) the finding should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) any order made by the court of trial upon or giving effect to the finding should be set aside on the ground of a wrong decision on any question of law; or
- (c) there was a material irregularity in the course of trial;

and in any other case the Court shall dismiss the appeal.

(3) The Court may dismiss an appeal under this section if it is of the opinion that, although the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

(4) Where, but for this subsection,

- (a) an appeal under this section would fall to be allowed; and
- (b) none of the grounds for allowing it relates to the question of the insanity of the appellant,

the Court may dismiss the appeal if it is of the opinion that but for the insanity of the accused the proper verdict would have been that he was guilty of an offence other than the offence charged.

Consequences where appeal under section 9 allowed

10.(1) Where an appeal under section 9 is allowed by the Court and the ground or one of the grounds for allowing the appeal is that the finding of insanity

of the appellant ought not to stand, but the Court is of the opinion that the proper verdict would have been a finding of guilty of the offence charged or any other offence of which the jury could have found him guilty, the Court shall

- (a) substitute for the finding of the jury a verdict of guilty of that offence; and
 - (b) subject to subsection (3), have like powers of punishing or otherwise dealing with the appellant and all the other powers that the court of trial would have had if the jury had returned that verdict.
- (2) Where the offence mentioned in subsection (1) is one for which the sentence fixed by law is death, the sentence to be given by the Court shall, whatever the circumstances, be one of imprisonment for life.
- (3) Where the Court allows an appeal under section 9 but subsection (1) of this section does not apply, the Court shall substitute a verdict of acquittal for the finding of the jury.
- (4) An order of the Court allowing an appeal under section 9 operates as a direction to the court of trial to amend the record to conform with the order.

Power to order detention under *Mental Health Act*

11.(1) Where in accordance with subsection (3) of section 10 the Court substitutes a verdict of acquittal and the Court is of the opinion that

- (a) the appellant is suffering from mental disorder, within the meaning of the *Mental Health Act*, Cap. 45, of a nature or degree that warrants his detention, with or without medical treatment, in a mental hospital under observation for at least a limited period; and
- (b) the appellant ought to be so detained in the interest of his own health or safety or with a view to the protection of other persons,

the Court shall make an order for his continued detention under that Act.

- (2) An order under subsection (1) is sufficient authority for the person to be detained, and the *Mental Health Act*, Cap. 45 applies as if on the date of the order

that person had been admitted to the mental hospital in pursuance of an application for admission for observation duly made under that Act.

Unfitness to stand trial

Right of appeal against finding of unfitness to stand trial

12.(1) Where the question of a person's fitness to be tried is to be determined and the jury has returned a finding of unfitness, the person may appeal to the Court against the finding.

(2) An appeal under this section is

(a) without leave of the Court,

- (i) on any ground of appeal that involves a question of law alone; or
- (ii) if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground that involves a question of fact, or a question of mixed law and fact, or on any other ground that appears to the Court to be a sufficient ground of appeal;

(b) with the leave of the Court,

- (i) on any ground that involves a question of fact alone, or a question of mixed law and fact; or
- (ii) on any other ground that appears to the Court to be a sufficient ground of appeal.

Disposal of appeal under section 12

13.(1) The Court shall allow an appeal under section 12 if it is of the opinion that

- (a) the finding of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;
- (b) the order of the court giving effect to the finding should be set aside on the ground of a wrong decision on any question of law; or

- (c) there was a material irregularity in the course of the determination of the question of fitness to be tried;

and in any other case, other than one to which subsection (3) applies, the Court shall dismiss the appeal.

(2) The Court may dismiss the appeal if it is of the opinion that, although the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

(3) When the question of fitness to be tried was determined later than on arraignment, an appeal under section 12 may be allowed by the Court, even though the finding was properly made, if the Court is of the opinion that the case is one in which the accused should have been acquitted before the questions of fitness to be tried was considered; and, if an appeal is allowed under this subsection, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded, otherwise than a verdict of not guilty by reason of insanity.

(4) Subject to subsection (3), where an appeal under section 12 is allowed

- (a) the appellant may be tried accordingly for the offence with which he was charged;
- (b) the Court may, pending any such trial, make such orders as appear to be necessary or expedient for the appellant's custody, admission to bail or continued detention under the *Mental Health Act*, Cap. 45; and
- (c) the provisions of sections 18 and 19 of the *Mental Health Act*, Cap. 45 apply to any persons in whose case an order is made by the Court under this subsection.

Alteration of sentence on appeal

14. On an appeal against conviction or sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence authorised by law, whether more or less severe, in substitution therefor as it thinks ought to have been passed; but in no

case shall any sentence be increased by reason or in consideration of any evidence that was not given at the trial.

Retrial

Power to order retrial

15.(1) Where the Court allows an appeal against conviction under section 4 and it appears to the Court that the interests of justice so require, the Court upon quashing the conviction and any sentence passed thereon may order the appellant to be retried.

(2) A person may not be ordered under this section to be retried for any offence other than

- (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed;
- (b) an offence of which he could have been convicted at the original trial on an indictment for the offence of which he was convicted at the original trial; or
- (c) an offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of convicting him of the offence of which he was convicted at the original trial.

Supplementary provisions as to retrial

16.(1) An appellant who is to be retried for an offence in pursuance of an order under section 15 shall be tried on the original indictment, or, when necessary, on a fresh indictment, and shall be tried before the High Court when sitting in its criminal division.

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- (2) The Court may, on ordering a retrial, make such orders as appear to it to be necessary or expedient pending the retrial
- (a) for the custody or admission to bail of the person ordered to be retried; or
 - (b) for the retention of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.
- (3) Where a retrial is ordered under section 15 in the case of a person who, immediately before the determination of his appeal was liable to be detained in pursuance of an order or direction under the *Mental Health Act*, Cap. 45,
- (a) that order or direction continues in force pending the retrial as if the appeal had not been allowed; and
 - (b) any order made by the Court under this section for his custody or admission to bail has effect subject to that order or direction.
- (4) The *Schedule* has effect with respect to the retrial of a person ordered to be retried and the sentence that may be passed if the retrial results in his conviction.

Review of cases

Reference by Director of Public Prosecutions

17.(1) Where a person has been convicted on indictment or, being charged on indictment with an offence, has been found not guilty on the ground of insanity, or been found by a jury to be unfit to plead, the Director of Public Prosecutions may

- (a) refer the whole case to the Court, and the case shall then be treated for all purposes as an appeal to the Court by that person; or
- (b) if the Director of Public Prosecutions desires the assistance of the Court on any point arising in the case, refer that point to the Court for its

opinion thereon; and the Court shall consider the point so referred, and furnish the Director of Public Prosecutions with its opinion thereon accordingly.

(2) The power of reference of the Director of Public Prosecutions under this section is exercisable at any time and, whether or not there has been an appeal or an application for leave to appeal.

Reference by Director of Public Prosecutions on point of law following acquittal on indictment

18.(1) Where a person tried on indictment has been acquitted, whether in respect of the whole or part of the indictment, the Director of Public Prosecutions may, if he desires the opinion of the Court on a point of law that has arisen in the case, refer that point to the Court, and the Court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of its consideration of the point referred to it, the Court shall hear argument

- (a) by, or by counsel on behalf of, the Director of Public Prosecutions; and
- (b) if the acquitted person desires to present any argument to the Court, by counsel on his behalf, or, with leave of the Court, by the acquitted person himself.

(3) Where the acquitted person appears by an attorney-at-law for the purpose of presenting any argument to the Court, he is entitled to such costs out of moneys provided by Parliament as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference.

(4) A reference under this section or under section 17 does not affect the trial in relation to which the reference is made or any acquittal.

*Procedure***Notice of appeal or application for leave**

19.(1) Subject to subsection (2), a person who wishes to appeal to the Court, or to obtain the Court's leave to appeal, must give notice of appeal or his application for leave to appeal, in the manner provided by rules of court within 21 days of the date of the conviction, verdict or finding appealed against, or,

- (a) in the case of an appeal or application for leave to appeal against sentence, other than a sentence of death, within 21 days of the date on which sentence was passed; or
- (b) in the case of an appeal or application for leave to appeal where the sentence is death, within 14 days of the date on which sentence was passed; or
- (c) in the case of an order made or treated as made on conviction, within 21 days from the date of the making of the order.

(2) Subject to section 20, the time for giving notice of appeal or of application for leave to appeal may be extended at any time by the Court.

(3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal, or notices of applications for leave to appeal, to any person who demands the same, and to the Superintendent of Prisons and other officers or persons, as the Registrar thinks fit.

(4) The Superintendent of Prisons shall

- (a) place the forms and instructions at the disposal of prisoners who wish to appeal or to make any application under this Act; and
- (b) cause any notice of appeal or of an application for leave to appeal that is given by a prisoner in custody to be forwarded on behalf of the prisoner to the Registrar.

Stay of execution

20.(1) The power of the Court under section 19 to extend the time for giving notice of appeal, or of an application for leave to appeal, is not exercisable in the case of a conviction involving sentence of death.

(2) In the case of a conviction involving sentence of death or corporal punishment,

(a) the sentence shall not in any case be executed until after the expiration of the time for giving notice of appeal or of application for leave to appeal under section 19; and

(b) if notice of appeal or of application for leave to appeal is so given, the appeal or application shall be heard and determined with as much expedition as practicable;

and the sentence shall not be executed until after the determination of the appeal or, in a case where an application for leave to appeal is finally refused, of the application.

Admission of appellant to bail and custody when attending Court

21.(1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated as a prisoner awaiting trial.

(2) The Court, if it thinks fit, may on the application of an appellant admit the appellant to bail pending the determination of his appeal.

Disposal of groundless appeal

22.(1) If it appears to the Registrar that a notice of appeal under this Part that purports to be on a ground of appeal that involves a question of law alone does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination.

(2) The Court may, if it considers that the appeal is frivolous or vexatious and can be determined without adjourning the proceedings for a full hearing, dismiss

the appeal summarily without calling on any one to attend the hearing or to appear for the Crown thereon.

Duties of Registrar

- 23.(1)** The Registrar shall
- (a) take all necessary steps for obtaining a hearing of any appeal or application that is not referred and dismissed summarily under section 22; and
 - (b) obtain and lay before the Court in proper form all documents, exhibits and other things that appear necessary for the proper determination of the appeal or application.
- (2) Rules of court may
- (a) be made to enable an appellant to obtain from the Registrar any documents or things, including copies or reproduction of documents, required for his appeal; and
 - (b) authorise the Registrar to make charges for them in accordance with rates and scales of payment prescribed by rules of court.

Transcripts, documents, etc.

Transcripts

- 24.(1)** Rules of court may be made to provide
- (a) for the making of a record, by means of shorthand notes, by mechanical means or any other technical device or otherwise, of any proceedings in respect of which an appeal lies to the Court; and
 - (b) for the making and verification of a transcript of any such record and for supplying the transcript, on payment of such fees as may be prescribed by those rules to the Registrar for the use of the Court or

any judge thereof, and to such other persons and in such circumstances as are prescribed by the rules.

(2) Without limiting subsection (1), the Director of Public Prosecutions may, if he thinks fit in any case, direct that a transcript be made of any record made in pursuance of the rules of the court and supplied to him.

Trial documents, etc.

25. Any documents, exhibits or other things connected with the proceedings on a trial on indictment shall be kept in the custody of the court of trial, in accordance with such provisions as are prescribed by rules of the court and for such time and subject to such power as are prescribed by those rules for the conditional release of any such documents, exhibits or things from that custody.

Judge's notes and report

26. In the case of an appeal or an application for leave to appeal, the judge of the court of trial shall furnish his notes of the trial and a report giving his opinion upon the case, or any point arising in the case, to the Registrar in the manner provided by rules of court.

The hearing

Right of appellant to be present

27.(1) Except as provided by this section, an appellant is, if he so wishes, entitled to be present on the hearing of his appeal, whether or not he is then in custody.

(2) An appellant in custody is not entitled to be present

- (a) when the appeal is on some ground involving a question of law; or
- (b) on an application for leave to appeal; or
- (c) on any proceedings preliminary or incidental to an appeal,

unless rules of court provide that he is to be so entitled or the Court gives him leave to be present; nor is he entitled to be present if he is in custody in consequence of a finding of not guilty on the ground of insanity.

(3) The power of the Court to pass sentence may be exercised notwithstanding that the appellant is for any reason not present.

Director of Public Prosecutions

28.(1) It is the duty of the Director of Public Prosecutions in person or by another attorney-at-law designated by him to appear for the Crown on every appeal brought under this Act.

(2) Rules of court shall make provision for the transmission to the Director of Public Prosecutions of all such documents, exhibits and other things connected with the proceedings as he may require for the purpose of his duties under this section.

Evidence

29.(1) For the purposes of this Part, the Court may, if it thinks necessary or expedient in the interests of justice,

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the Court necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether or not he was called at the trial; and
- (c) subject to subsection (3), receive the evidence, if tendered, of any witness.

(2) Without limiting subsection (1), where evidence is tendered to the Court under that subsection, the Court, unless it is satisfied that the evidence if received

would not afford any ground for allowing the appeal, shall receive the evidence if

- (a) it appears to the Court that the evidence is likely to be credible and would have been admissible at the trial on an issue that is the subject of the appeal; and
 - (b) the Court is satisfied that though it was not adduced at the trial there is a reasonable explanation for the failure to adduce it.
- (3) Paragraph (c) of subsection (1) applies to any witness, including the appellant, who is competent but not compellable, and applies also to the appellant's spouse where the appellant makes an application for the purpose and the evidence of the spouse could not have been given in the proceedings from which the appeal lies, except on such an application.

Additional powers of Court

30.(1) For the purposes of this Part, the Court may exercise any of the following powers where it thinks it necessary or expedient in the interests of justice:

- (a) in the case of any witness whose attendance might be required under paragraph (b) of section 29(1) the Court may order his examination to be conducted in the prescribed manner before a judge of the Court or before any person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;
- (b) where a question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or other investigation, that cannot in the opinion of the Court conveniently be conducted before it, the Court may order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by the Court, and act upon the report of the commissioner so far as it thinks fit to adopt it;

- (c) the Court may appoint a person with special expert knowledge to act as assessor to the Court where it appears to the Court that such knowledge is required for the proper determination of the case.
- (2) The Court may, in relation to its proceedings, exercise any other powers which may for the time being be exercised by the Court on appeals in civil matters, and may issue any warrants necessary for enforcing the orders or sentences of the Court.

Cost of appeal

31. There shall be defrayed out of moneys voted for the purpose by Parliament

- (a) the expenses of any witness attending on the order of the Court or examined in any proceedings incidental to the appeal;
- (b) the expenses of the appearance of the appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal;
- (c) all expenses of and incidental to
 - (i) any examination of witnesses conducted by any person appointed by the Court;
 - (ii) any reference of a question to a special commissioner appointed by the Court; and
- (d) the expenses of any person appointed as assessor to the Court up to an amount allowed by the Court,

subject to any rule of court as to rates and scales of payment and in accordance with the manner prescribed by those rules.

Restitution of property

32.(1) Except as provided by this section, the operation of an order made on conviction on an indictment for the restitution of property to any person, and the operation in the case of any such conviction under subsection (1) of section 24

of the *Sale of Goods Act*, Cap. 318 as to the reversion of property in stolen goods on conviction, is suspended

- (a) in any case until the expiration of 21 days from the date of conviction; and
 - (b) where notice of appeal or of application for leave to appeal is given within 21 days from the date of conviction, until the determination of the appeal.
- (2) Subsection (1) does not apply where the court of trial directs to the contrary in the case of any order where, in the opinion of that court, the title to the property is not in dispute.
- (3) Where the operation of any order or of subsection (1) of section 24 of the *Sale of Goods Act*, Cap. 318 referred to therein is suspended until the determination of the appeal, that order or the subsection, as the case may be, does not take effect as to the property in question if the conviction is quashed on appeal.
- (4) Rules of court may make provision for securing the safe custody of any property pending the suspension of the operation of an order or of subsection (1) of section 24 of the *Sale of Goods Act*, Cap. 318.
- (5) The Court may, by order, annul or vary an order made on a trial for the restitution of property to any person, although the conviction is not quashed, and the order, if annulled, does not take effect and, if varied, takes effect as so varied.

Computation and commencement of sentence

- 33.(1)** The time during which an appellant pending the determination of his appeal is not detained in custody does not count as part of any term of imprisonment under his sentence.
- (2) Subject to subsection (3), 6 weeks of the time during which any appellant is in custody pending the determination of his appeal or the whole of that time if

less than 6 weeks does not count as part of any term of imprisonment under his sentence.

(3) Subsection (2) does not apply where leave to appeal is granted or any certificate mentioned in subsection (2) of section 3 has been given for the purpose of the appeal.

(4) In any other case, the Court may direct that no part of the time referred to in subsection (2) or such part thereof as that Court thinks fit, whether shorter or longer than 6 weeks, shall be disregarded as mentioned in that subsection.

(5) Subject to subsections (1) to (4), the term of any sentence passed by the Court in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought begins, unless that Court otherwise directs, to run from the time when it would have begun to run if the sentence were passed in those proceedings; and references in this section to any sentence to which the appellant is for the time being subject shall be construed accordingly.

Case stated or question of law reserved

34.(1) Where a person is convicted on indictment, the trial judge may state a case or reserve a question of law for the consideration of the Court, and the Court shall consider and determine the case stated or question of law reserved and may

- (a) confirm the judgment given upon the indictment;
- (b) order that the judgment be set aside, quash the conviction and direct that a verdict and judgment of acquittal be entered;
- (c) order that the judgment be set aside and give instead thereof the judgment that ought to have been given at the trial;
- (d) require the judge by whom the case was stated or question reserved to amend the statement or question when specially entered on the record;
or
- (e) make such other order as justice requires.

(2) When a case is stated or a question of law is reserved under subsection (1) for the opinion of the Court, the Court may, if it thinks fit, cause the case or question to be sent back to the judge for amendment, and thereupon the judge shall amend accordingly.

(3) Where a case is stated or a question of law is reserved for the consideration of the Court under subsection (1), sections 20, 21, 23, 27, 28, 31, and 33 apply to those proceedings in like manner as to an appeal.

Case stated by judge at request of Court of Appeal

35. In the case of an appeal that involves a question of law alone, the Court may, if it thinks fit, request the trial judge to state the question, together with all the circumstances under which the question arose, in such manner as may be prescribed by rules of court.

Prerogative of mercy

36. Nothing in this Part affects the prerogative of mercy.

PART IA

REVIEW OF SENTENCING

Scope of this Part

36A.(1) A case to which this Part applies may be referred to the Court for the sentencing to be reviewed under section 36B.

(2) This Part applies to any case in which sentence is passed on a person convicted of an offence in the High Court or a magistrate's court.

[2000-5]

Review of sentencing

36B.(1) Without prejudice to anything in Part I relating to appeals in, or references of, criminal cases or matters to the Court, the Director of Public Prosecutions, if it appears to him that the sentencing of a person in a case to which this Part applies has been unduly lenient, may refer the case to the Court for the Court to review the sentencing; and on such a reference the Court may

- (a) quash the sentence passed on that person by the court of trial; and
- (b) in place of that sentence pass such sentence as the Court thinks appropriate and as the court of trial had power to pass when dealing with him.

(2) The condition specified in subsection (1) may be satisfied if it appears to the Director of Public Prosecutions that the judge or, as the case may be, the magistrate erred in law as to his powers of sentencing.

(3) The time during which a person is in custody pending the review of his case pursuant to a reference under this Part shall be reckoned as part of the term of any sentence to which he is for the time being subject.

(4) The term of any sentence passed by the Court under subsection (1) shall, unless the Court orders otherwise, begin to run from the time when that term would have begun to run if it had been passed by the court of trial.

(5) The provisions of subsections (2) and (3) of section 18 shall apply, with such modifications and adaptations as are necessary, in relation to a case referred to the Court under this Part as those provisions apply in relation to a case referred to the Court under that section.

[2000-5]

PART II
APPEALS TO PRIVY COUNCIL

Right of appeal to Her Majesty in Council

37. Subject to sections 38 and 39, an appeal lies to Her Majesty in Council

(a) as of right

- (i) from a final decision of the Court in any criminal or other proceedings that involves a question as to the interpretation of the *Constitution*;
- (ii) from any decision of the Court on an appeal on a final decision of the High Court involving a criminal cause or matter given in exercise of its jurisdiction under section 24 of the *Constitution*;
- (iii) from any final decision of the Court on an appeal in any criminal proceedings on a ground that involves a question of law alone;

(b) with leave of the Court,

- (i) from any decision of the Court in any criminal or other proceedings, where in the opinion of the Court the question involved in the appeal is one that, by reason of its general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for consideration;
- (ii) from any decision of the Court on an appeal on a final decision of the High Court involving a question of mixed law and fact.

Procedure. S.I. 1966 No. 1456.(U.K.)

38. The provisions of the *Barbados (Procedure and Appeals to Privy Council) Order* apply to all appeals from the Court to Her Majesty in Council.

Saving of special leave to appeal

39. Nothing in this Part affects any right of Her Majesty to grant special leave to appeal from decisions of the Court to Her Majesty in Council in any criminal or other matter.

PART III

MISCELLANEOUS, TRANSITIONAL POWERS ETC.

Power to make rules

40.(1) The Judicial Advisory Council may make rules of court for the purpose of giving effect to this Act and for

- (a) regulating generally the practice and procedure under this Act; and
- (b) prescribing anything that by this Act is required or authorised to be prescribed.

(2) Rules of court made under this section are subject to negative resolution.

Provision regarding pending appeals

41.(1) Where before 1st September, 1983 a notice of appeal or of application for leave to appeal has been given to the Court in any criminal cause or matter against any conviction, sentence or order of the High Court, but proceedings in respect of that appeal are on that date still pending, all such proceedings shall be continued as if instituted under this Act.

(2) Nothing in this section affects the application of section 29 of the *Interpretation Act*, Cap. 1 with regard to the effect of repeals.

SCHEDULE*(Section 16 (4))**CONVICTION AND SENTENCES*

1. Notwithstanding any rule of law to the contrary, a person ordered to be retried under section 15 may, if found guilty, be convicted on the retrial, and the court before which he is so convicted may pass in respect of the offence of which he is so convicted any sentence authorised by law to be imposed upon a conviction for that offence.

2. Without affecting the power of the court to impose any other sentence, the court before which a person is convicted on retrial may pass in respect of the offence any sentence lawfully passed in respect of the offence charged on the original conviction, notwithstanding that on the date of the conviction on retrial that person has ceased to be of an age at which such a sentence could otherwise be passed.

3. Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence begins to run from the time when the sentence passed at the original trial would have begun to run; but, in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be,

(a) any time before his conviction on retrial that would have been disregarded if the sentence had been passed at the original trial and the original conviction had not been quashed; and

(b) any time during which he was at large after being admitted to bail under section 21,

shall be disregarded.