

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1983

EVIDENCE AND FORENSIC MEDICINE

Wednesday, August 17, 1983

INSTRUCTIONS TO STUDENTS

- a) Time: 3½ hours.
- b) Answer Question 1 and FOUR (4) others.
- c) Answer Question 1 on the separate answer sheet provided.
- d) 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.
- e) It is unnecessary to transcribe the questions you attempt.

QUESTION 1 (COMPULSORY)

EITHER A. What are the different kinds of violent asphyxial deaths you know of. Describe briefly the post mortem appearances in any one of them.

OR B. Write short notes on:

- (1) Abrasions
 - (2) Post mortem lividity
 - (3) Firearm injuries caused by shot-gun
 - (4) Circumstantial evidence
 - (5) Mummification
 - (6) Insanity
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QUESTION 2

(i) John is taken into custody on December 17, 1982 for questioning in connection with a number of offences of housebreaking and larceny in the Mona area. He is placed in a cell at the campus police station and on the following day the questioning commences. Present are a Detective Inspector and a Sergeant of Police. Before the questioning begins, John says:

"Officers, before I say anything I need some assurance that I will get bail before Christmas, because I am a family man and my wife and children will miss me over the season, not to mention my own feelings."

The Detective Inspector responds by telling John sternly that he should know better and that responsible officers do not behave in that manner. "You had better talk and stop asking me damn fool questions about me giving you an assurance!" exclaims the Inspector.

The questioning begins and continues for an hour, during which time nothing of consequence emerges and John does not inculcate himself in any way. After this, the officers take a break and John returns to his cell where his wife, who has come to visit him, is waiting. After bringing her up to date on what has happened so far, John says to her:

"You know, I think that Inspector is just being miserable; the last time I was in I got bail immediately after I told them the full story. I really want to get out of here and I think they'll give me bail if I talk - what do you say?"

John's wife replies agreeing with John, urging him to talk and telling him how much the children miss him already.

Later, when the questioning resumes John announces that he is ready to talk because, although the Inspector won't promise him bail, he knows that the Inspector is a compassionate man who wouldn't keep a man from his family over Christmas. The Inspector merely glares at John and tells him to hurry up because he hasn't got all day. He does not, however, caution John who now makes a full confession in respect of four of the thefts, at the end of which he reopens the question of bail. However, he is not given bail until December 24, 1982, by which time he has made two further statements implicating himself in several of the other offences.

Advise on the proper ruling where at John's trial on ten counts of housebreaking and larceny he objects to the admissibility in evidence of the statements on the grounds that they were not voluntary that they were obtained in oppressive circumstances, and that he was not cautioned before he made them.

QUESTION 2 cont'd

(ii) In what circumstances may evidence of testimony by the accused on a voir dire into a challenged confession be led by the prosecution on the resumed trial?

QUESTION 3

(a) Vincent is indicted for setting fire to his house in order to obtain the money for which it is insured. During the case for the prosecution, it was proposed to tender evidence showing that Vincent had lived in two other houses successively in each of which a fire had occurred and for which he had received the insurance money.

(b) Lewis, a dentist, extracted one of Gordon's teeth. Infection set in and Gordon became seriously ill; Gordon claims that this was due to the use of unsterilized equipment and sues Lewis for negligence. Gordon wishes to call Kennedy and Clarke, two former patients of Lewis to give evidence that they also suffered from infection after having had their teeth extracted by Dr. Lewis.

Is the evidence in either case admissible?

QUESTION 4

(i) State the distinction between the cases in which corroboration is required by law and by practice and give illustrations of each type of case. What are the consequences of the requirement in each case?

(ii) In undefended divorce proceedings on the ground of cruelty, the trial judge takes the view that he is not satisfied from the evidence of the petitioner and her witnesses that the ground has been established. He says this:

"My understanding of the law is that I should apply to these proceedings the standard of proof that would be applicable in a criminal case and, since I am not sure on this evidence, I will not grant a decree nisi. It may have been otherwise had I been able to apply the lesser standard."

Advise the petitioner on her chances on appeal from this judgment.

QUESTION 5

Jenkins was being tried for robbery and during his trial, the following exchange took place:

Counsel for the Prosecution: "M'Lord, my learned friend for the defence has advised me that he intends to object to my next bit of evidence and we have agreed, with your approval of course, that the jury should retire while we discuss the point."

His Lordship: (on getting concurrence from Defence Counsel)
"Very well. I will hear arguments in the absence of the jury." (Jury leaves).

Counsel for the Defence: "My objection sir, is that the next bit of evidence to be led is pure hearsay and should not be allowed. The words were uttered originally by someone who is not a witness and can only be offered by the Prosecution to prove the facts of what was said."

Counsel for the Prosecution: "I submit, M'Lord, that my learned friend's objection, while it sounds attractive is actually misconceived, and while what he says is factually accurate, I submit that the statement which I seek to introduce into evidence is properly part of the res gestae and so admissible as an exception to the hearsay rule since the words accompanied an act."

His Lordship: "But Mr. Prosecutor, should you not lay the groundwork and address me on rules which govern the admission in evidence of declarations which accompany acts and may be said to form part of the res gestae?"

What are the rules on which Counsel for the Prosecution should address the Court?

QUESTION 6

You are appointed Crown Counsel in the Chambers of the Director of Public Prosecutions and are asked to advise as to the admissibility and weight of the evidence of the following witnesses who are to be called to give evidence in the Circuit Court:

- (a) An accomplice;
 - (b) the wife of an accomplice;
 - (c) a six-year old child.
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QUESTION 7

Arthur was tried in the Circuit Court for receiving \$3,000 part proceeds of a bank robbery. The robbery took place on October 31, 1981 and on November 12, 1981 the police visited the home of Arthur's sister where they found the money in a suitcase belonging to Arthur. The sister made a written statement to the police in which she said that Arthur brought the suitcase with the money to her house for safe keeping, but at the trial she said she knew nothing of the suitcase or the money.

In what way can the prosecution make use of the written statement and what would be the purpose?

QUESTION 8

(a) A, B and C were charged on one indictment with offences concerning the same forged \$20 notes: count 1 charged A with uttering the notes; count 2 charged B with being in possession of the notes; and count 3 charged A and C with their joint possession. The prosecution's case was that A and C had been in joint possession of the notes and that A had uttered them to B.

B gave evidence against A and the latter's counsel applied for leave to cross-examine B as to character, invoking the local equivalent of Section 1(f)(iii) of the Criminal Evidence Act 1898 (U.K.). The judge allowed the application on the ground that A and B were charged with the "same offence" and B was convicted.

Advise B on his chances of a successful appeal.

QUESTION 8 cont'd

(b) In the course of giving evidence in his defence to a charge of murder, Topsy made a severe attack on the character of the prosecution witnesses. In his cross-examination of Topsy prosecuting counsel, with the leave of the Court, proceeded to question Topsy about the occasions when two previous employers had dismissed him after accusing him of stealing from their business places, and about the occasion when he was tried and acquitted on charges of indecently assaulting some young girls.

Topsy is convicted and seeks your advice on his chances on appeal. Advise him.
