

NORMAN MANLEY LAW SCHOOL - HUGH WOODING LAW SCHOOL

Council of Legal Education

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LEGAL EDUCATION CERTIFICATE EXAMINATIONS 1976

EVIDENCE AND FORENSIC MEDICINE

Wednesday, June 16, 1976

Instructions to Students

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

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QUESTION 1 - (Compulsory)

Answer either Section A or B (on the separate answer sheet provided)

A - NORMAN MANLEY LAW SCHOOL

EITHER

(a) A teen-aged girl was found dead in a gully with marks of strangulation. What are the external findings you expect to read in a post-mortem report and the cause of death in such a case.

OR

(b) A partially charred body was found in a burnt out building. What are the post-mortem findings to prove that the person was alive at the time of the fire.

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B - HUGH WOODING LAW SCHOOL

EITHER

(i) Classify wounds. Discuss the medico-legal aspects of contusions.

OR

- (ii) Write notes on:-
- (a) Adipocere.
  - (b) Factors modifying action of poisons.
  - (c) Tests for drunkenness.
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QUESTION 2.

(1) Danny is charged with robbery in which a car was used. There was evidence that shortly before the robbery Danny had hired a car with registration number ABC 1. The victim was unable to identify Danny as the person who robbed him but he gave evidence that he took the number of the car used by the robber to make good his escape and dictated it to a police officer. The victim could not remember the car's registration number. However, the officer gave evidence that he wrote the number down exactly as it was given to him by the victim and he produced a piece of paper on which he had written ABC 1.

The evidence given by the officer was a cardinal link in the prosecution's case which secured Danny's conviction.

How would you argue Danny's appeal in the light of the evidence adduced at his trial?

(2) Worthless is charged with incest with his daughter aged five. The child gave no evidence at his trial. However, her grandmother gave evidence of a complaint made to her by the child soon after the offence was committed in which she named Worthless as her assailant.

Worthless is convicted. Does he have a good ground of appeal?

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QUESTION 3.

(1) Eddie is charged with selling intoxicating liquor without holding a licence from the licensing authority contrary to the provisions of a statute regulating the sale of alcohol.

At his trial Eddie observed that the prosecution had closed their case without calling any evidence to show that he did not hold a licence. He felt quite confident that he would be acquitted. Alas, after a quite casual statement of his defence which was essentially an immodest boast of how successful he had been and how the people he served respected him, Eddie was convicted. He is very astonished by the outcome and he would like to learn how this was possible.

Advise Eddie.

(2) At his trial for murder Nuts raised the defence of insanity. In summing up the case to the jury the trial judge told them -

"I am not going to express any view to you on the matter because I should not appear to be influencing you. The issues are for you to decide. However, as the accused has raised the defence of insanity I must tell you that he has to satisfy you so that you have no doubt at all about it in your minds before you believe what he is saying."

State more fully the principles of law governing the burden and standard of proof relevant to the above and comment on the judge's direction.

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✓ QUESTION 4.

(1) H and W separated the day after their wedding because H had refused to consummate the marriage. They never met again until three years later when W, on entering a club to keep a rendezvous with a friend, observed H and his brother in the act of beating the proprietor savagely. The proprietor died from the injuries he received and H and his brother are charged jointly for the murder of the proprietor. There is no other eye witness to the incident apart from W, H and his brother, nor is there any circumstantial evidence implicating H or his brother in the murder, or any admission of guilt by either of them.

W has stated that she has no intention of giving any evidence at the trial of H and his brother.

Can W legally refuse to give evidence in this case and, if so, is there no way that either of these two men can be brought to justice?

(2) A husband and wife were having an altercation. The husband struck the wife a blow which caused a wound. She made a report to the police and the husband was charged with wounding. He told the police officer that no court would allow a wife to give evidence against her husband.

How would you guide the husband on this matter if he were to consult you?

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QUESTION 5.

(1) Bodle, the headmaster of a boarding school for boys, is charged on two counts of an indictment with buggery against A and B who were first and fourth form students respectively at the school. The offence against A took place three weeks after the offence against B. Each boy was the weakest student in his respective class and each had a nervous disposition.

The evidence given on oath by each boy at Bodle's trial had some common features. They amounted to this. Bodle went into the dormitory late at night just as each boy put out the light. Bodle went to the boy's bed and turned on the light. He gave the boy illustrated pornographic literature and urged him to read it before going to bed. Within half an hour of leaving the dormitory Bodle returned and invited the boy to come quietly to his room where he committed the offence.

Bodle denied these allegations and his counsel asked the trial judge to instruct the jury to treat the circumstances of each offence separately and not to allow any view they form in relation to one incident, if such view is adverse to his client, to influence them in their consideration of the other.

However, the trial judge directed the jury that they were at liberty to consider the evidence in respect of count one as being admissible on the other count and vice versa.

On what basis can this direction be justified?

(2) Queenie is charged with indecently assaulting two young boys. At her trial the boys were examined by the judge on the voir dire. They both impressed the judge as being very intelligent boys for their age - each was barely eight years old - and he considered that they appreciated the duty of speaking the truth. However, he was not satisfied that they were sufficiently aware of the impiety of telling a falsehood on oath. He therefore allowed them to give unsworn testimony. Each in turn gave lucid evidence of being indecently assaulted by Queenie and of actually witnessing the assault upon the other.

The judge in his charge to the jury told them that if they were impressed by the boys' testimony as he was, they were at liberty to treat each boy as corroborating the other and that on such strong evidence they could find Queenie guilty.

Is there any defect in the judge's direction?

Would the situation be altered to any degree if there was a third little boy who had witnessed the assaults and who was allowed to give evidence after satisfying the trial judge on the voir dire?

QUESTION 6.

(1) (a) Shorty is charged with raping T. At the trial whilst T was giving evidence under cross-examination by Shorty's attorney the suggestion was put to her that she had invited Shorty's younger brother to have sexual intercourse with her on several occasions prior to the date on which she said Shorty raped her. T denied this emphatically and Shorty's attorney informed the trial judge that he proposed to call Shorty's brother to substantiate the allegations he put to T and to show that she was not telling the truth.

The judge told Shorty's attorney that he would not allow this evidence to be adduced.

Can this ruling be justified?

(b) Immediately after the ruling at (a) above Shorty's attorney is handed a statement signed by T's sister that she knew as a fact that T had allowed Shorty to have sexual intercourse with her on one occasion prior to the date of the alleged rape. In view of T's denial of this allegation also when it was put to her and in the light of the judge's ruling in (a) above, Shorty's attorney thinks it would be futile to ask leave of the judge to call T's sister to give evidence.

Can Shorty's attorney expect a favourable ruling this time in his bid to get T's sister to give evidence?

(2) At Tom's trial for larceny of some sacks of flour the prosecution called Harry as their principal witness, expecting him to say that he saw Tom steal the flour. However, when giving his evidence under examination-in-chief Harry stated that he knew Tom very well and that he was sure that it was not Tom who stole the flour but somebody who looked a bit like Tom.

(a) The prosecution sought and obtained leave of the trial judge to cross-examine Harry and to put to him the written statement he had given the investigating constable and the deposition he gave at the preliminary enquiry.

(b) In his summing-up the trial judge directed the jury that it was entirely up to them to decide whether to prefer the evidence given by Harry at the committal proceedings, where he said in unequivocal terms that Tom was the thief, to that which he gave at the trial that the thief looked a bit like Tom.

Discuss the correctness or otherwise of the actions of the trial judge referred to in (a) and (b) above.

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QUESTION 7.

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Joseph is charged with falsification of accounts. The prosecution alleges that whilst he was employed with Jack's firm he made false entries in the delivery book. The charge relates to a consignment of 2,000 bags of flour which is entered as 1,000 bags.

The prosecution wishes to put into evidence other entries in the delivery book where Joseph had incorrectly stated the amount of goods delivered to customers.

- (i) Advise the prosecution on the admissibility of these other entries into evidence.
- (ii) Joseph gives evidence that the charge was trumped up by his former boss Sammy with the intention to dismiss him.

Advise the prosecution as to whether Joseph could be cross-examined on all or any of the following:

- (a) his previous convictions for receiving stolen goods
  - (b) a pending charge of rape
  - (c) his expulsion from the exclusive Snooty Members Club.
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QUESTION 8.

Baba is startled by the sound of falling glass in a neighbouring apartment. He then hears a voice which he discerns to be that of his neighbour Harry saying, "Don't shoot Roger, you have taken all the money". By the time he reaches his porch he sees his neighbour falling from the third floor balcony. A figure rushes past to the steps and disappears in the night. Harry suffers severe brain damage and is reduced to the state of a human vegetable.

At Roger's trial for armed robbery the prosecution wishes to lead Baba's evidence of the statement he overheard.

- (i) Advise the prosecution as to the admissibility of this statement.
  - (ii) Can the prosecution call Peter who lives downstairs to testify to the fact that he had been threatened by the accused 15 minutes earlier when he surprised him attempting to enter through a rear window.
  - (iii) Assuming that Baba never attended an identification parade can he be asked to identify the accused in court? What is the proper way to treat such evidence if given?
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