

FOR REFERENCE ONLY

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION 1977

EVIDENCE AND FORENSIC MEDICINE

Wednesday, June 15, 1977

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.

QUESTION 1 - (COMPULSORY)

EITHER A. What are the signs of death? How does rigor mortis help in determining the time since death?

OR B. A new-born infant was found dead in the toilet of a house. How does the post mortem examination prove that the infant was a full-term live-born child and died as a result of suffocation?

QUESTION 2

a) Misshap injured her hand on a machine at which she was required to work at her workplace. As soon as she went home after the accident on the same day of its occurrence, she related to her girl friend the circumstances in which she got injured. Whilst doing so, she described the machine as being "a most dangerous piece of equipment, installed in a most haphazard fashion and positioned in a most awkward location". She went on to tell her girl friend that there was no way a person could operate the machine day after day, as she was required to do, without

running the risk of being injured in the manner she was.

Two years after the incident, the matter came up for trial consequent upon a negligence action brought by Misshap against her employers for damages for her injuries. In the course of Misshap giving evidence, her lawyer seeks to examine her about the things she had told her girl friend on the day of her accident, about the negligent operation of her employers in connection with the machine.

Counsel for Misshap's employers objects to this evidence being adduced on the ground that it is inadmissible.

Is there any substance in this objection?

b) At Bill's trial for housebreaking, his wife Flossie is giving evidence on behalf of the defence when Counsel for the prosecution in cross-examining her, puts to her a suggestion that she has acted in collusion with her husband in concocting a false alibi. Flossie is quite distressed at this suggestion because she recalls that she had given her own lawyer a statement concerning the whereabouts of her husband at the very hour he is alleged to have committed the offence. She had given this statement to her solicitor quite some time before her husband was apprehended, and it was to the effect that at the hour in question she had caught him in the act of committing adultery at a place which was a considerable distance away from where the housebreaking is alleged to have taken place.

If you were Bill's attorney and you became aware of this written statement to Flossie's lawyer, what would you do?

c) Whilst Bill's lawyer was examining one of his own witnesses, Yesman, from a statement signed by him substantiating Bill's alibi, Yesman denied the relevant parts of the statement where it supported the alibi.

How should Bill's lawyer deal with this dilemma?

QUESTION 3

At Hopeless' trial on charges of indecent assault upon three young girls aged 9, 10 and 11 years respectively, who were all present and witnessed the assaults upon each other, a voir dire was conducted in respect of each child, at the end of which Counsel for Hopeless urged the trial judge in each case not to cause any of the girls to be sworn as none

showed any awareness of the divine sanction of an oath.

The trial judge said he agreed with the point made by counsel but that he was convinced in his own mind that he would not be doing the right thing if he did not allow any of the girls to be sworn. Accordingly, he caused the older and the eldest girls to be sworn.

All three girls gave evidence supporting each other in respect of the indecent assaults committed on them by Hopeless.

(1) Is there any merit in Hopeless' appeal against conviction, based on the decision taken by the trial judge to allow two of the girls to be sworn in spite of his accepting that they had demonstrated an unawareness on their part of the divine sanction of an oath.

(2) How would it have affected Hopeless' case if the judge had acceded to his counsel's urgings not to allow any of the girls to be sworn?

QUESTION 4

At Superstar's trial on several counts of an indictment including one for malicious destruction of property inside a supermarket belonging to Handful, a police officer, who was the only eye-witness to the damage being done, in the course of giving evidence itemized with detailed description some twenty items which he said he saw Superstar destroy. Inasmuch as the trial was taking place two years after the incident, counsel for Superstar struck by the police officer's seeming phenomenal memory, cross-examined him as to how was he able to recollect so much details of the incident. The officer, after not a little hesitation, revealed that while Superstar was smashing Handful's mart he made notes in his notebook of the various items, along with their description, which were being damaged, and that a few days afterwards he recorded on his own tape-recorder his own recollection in the same dramatic terms as how the incident occurred, aided as he was by the notes he had made. The officer further stated that he played the tape recording of the incident a few times over on the night before the day of the trial.

Counsel for Superstar submitted that the trial judge should order that the police officer's evidence should be expunged from the record and the tape recording confiscated and destroyed on the ground

that the police officer had adopted an unfair, illegal and irregular practice.

(1) How is the trial judge likely to deal with this submission?

(2) It further transpired that at the trial Superstar's counsel requested the court to pay a visit to Handful's supermarket as it was his contention that, from the position the police officer described as the point where he stood and observed Superstar's performance, he could not possibly have seen half of the activity he attributed to Superstar.

The trial judge replied that it was the jury who were going to have to decide the issues so there was no point in his going with them. Accordingly, when everyone else proceeded to the supermarket he remained in his Chambers perusing his own notes of the evidence. On the resumption of court and at the close of the addresses the judge summed up to the jury, and whilst so doing he told them, inter alia, that they had heard counsel for Superstar put it to the police officer that he could not have seen all of what he said he saw, and he reminded them that they have been more fortunate than he was because they had gone to Handful's supermarket and seen the situation there, which he had not done, so it was for them to decide that controversy one way or the other.

On Superstar's conviction he wishes to appeal. Is there anything in the foregoing on which you consider a worthwhile appeal can be pursued?

QUESTION 5

(1) At Anxious' trial the judge directed the jury as to the burden and standard of proof in the following terms:

" It is for the prosecution to prove the charge so that you are sure it has been made out; to prove it beyond a reasonable doubt, those being two different ways of saying the same thing; which is to say a doubt to which you can give a reason it is sometimes said the sort of matter which might influence you if you were to consider some business matter, for example, a mortgage concerning your house."

Anxious is convicted and he wishes to appeal on the ground that the direction on the standard of proof was unsatisfactory.

Do you consider that there is any merit in this ground of appeal?

(2) Hapless is suing Nogood, a Director of Empty Company, to recover damages for fraudulent misrepresentation made to him by Nogood in connection with the purchase of shares in the company.

The evidence given by Hapless is that Nogood had misrepresented to him that the shares of the company were very valuable and in great demand, so much so that the Government was prepared to take up a sizeable portion of the equity. According to Hapless, these representations by Nogood induced him to invest \$20,000 in Empty Company. Evidence was also adduced to show that in truth and in fact the shares were valueless at the time when Nogood was making these representations to Hapless, and that at no stage did Government show any interest whatsoever in investing in the company or giving it any backing. The evidence also showed that Nogood was fully aware of the true situation regarding the company.

Assuming the action is being tried by a judge with a jury, what directions should the trial judge give the jury with regard to the standard of proof applicable to the case?

QUESTION 6

At Hopeful's trial on a charge of rape, the prosecution sought to adduce in evidence a signed confession alleged to be one given by Hopeful. Counsel for Hopeful objected to the admission of this confessional statement on the ground that whilst Hopeful was being interviewed by the police officer who took down the statement allegedly given by Hopeful, he had asked the officer whether there was any chance that the charge he would eventually have to face at his trial may be one of indecent assault instead of rape, if he were to tell the whole story, whereupon the officer replied: "It may be better for you if you told me precisely how it went."

The police officer concerned has given a statement to prosecuting counsel, the particulars of which coincided with the foregoing stated

dialogue between Helpful and the police officer.

- (a) How should the trial judge deal with the objection made by Helpful's counsel to the reception of the confession, and how is he likely to rule?
- (b) Would the result be any different if the line taken by Helpful's counsel was to object to the admission in evidence of the confession on the ground that Helpful had not given a statement at all, confessional or otherwise, or signed any document purporting to be such a statement.
- (c) Assuming that the confession statement was held by the trial judge to be inadmissible, would it be permissible for the prosecution to adduce evidence that they found various items of the complainant's apparel which she was wearing immediately before the assault upon her, in a tattered condition and with spermatozoa thereon, at a place where it is alleged that Helpful said in his statement they would be found? ✓

QUESTION 7 /

Devious and Nervous are jointly charged with the burglary of Helpful's house and with larceny therefrom of a television set.

At the trial the prosecution led evidence that on the morning after the night of the burglary a pair of shoes belonging to Devious were found in one of the rooms of Helpful's house.

In giving evidence Devious sought to explain the presence of his shoes in the room, by stating that he had a homosexual relationship with Nervous who, according to Devious, was a mutual friend of his and Helpful, and that Helpful, knowing of the relationship, had kindly allowed them the use of the room as a rendezvous. Helpful, in his evidence, had denied the suggestion put to him that he knew of the relationship and that he was a party to any such arrangement.

Devious further stated that on the night in question, he had left Helpful's house in a hurry without his shoes because he had to rush to catch the last bus before it left the terminus. According to him, when he was leaving the house Helpful's television set was still there and so was Nervous, and that moreover, Nervous had said that he would

rather stay there until daybreak as he did not wish to venture to walk through the dark alleyway which perforce he must traverse to get to his house.

At the conclusion of Devious' evidence in chief, both counsel for the prosecution and counsel for Nervous wish to cross-examine him as to his previous convictions for bigamy.

- (a) How should the trial judge rule in respect of these applications?
- (b) What directions should the trial judge give to the jury regarding the value that they should attach to Devious' evidence in so far as it implicated Nervous?

QUESTION 8

Scamp is charged with assaulting Unlucky and thereby occasioning him actual bodily harm.

At the trial besides the doctor who treated Unlucky for his injuries, and the police officer who arrested and charged Scamp, the only other witness for the prosecution was Unlucky.

The evidence given by Unlucky was to the effect that whilst he was standing on the piazza at the entrance to a shop, and whilst speaking with his former headmaster, he felt a blow on his shoulder, and saw a machete fall to the ground beside him. Unlucky did not see who struck him with the machete, but on seeing blood gushing from his shoulder he exclaimed: "Who chopped me?", whereupon, according to Unlucky, the headmaster who was facing him and the shop at the material time, pointed to the inside of the shop. Unlucky said that he proceeded immediately into the shop where the only person he saw was Scamp who appeared to be sweeping the floor of the shop. Unlucky stated that he held Scamp in his waist and brought him outside to the piazza where the headmaster was still standing and said: "It is this knave who chopped me, eh?" According to Unlucky the headmaster nodded thrice and walked away, and Scamp made no response at all to this remark, not even when he asked him in clear terms: "What have I done you why you chopped me?"

- (a) Discuss the admissibility of the foregoing evidence.
 - (b) How should the trial judge direct the jury with regard to Scamp's silence in the two instances when Unlucky accused him of chopping him?
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