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NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATION 1978

EVIDENCE AND FORENSIC MEDICINE

Thursday, June 15, 1978

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)

EITHER A. Describe a close-contact wound caused by

- (a) shot gun
- (b) rifle

OR B. Describe the post-mortem findings: external appearance only of a man found hanging from a tree.

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QUESTION 2

Sam and Joe are jointly charged with larceny of Mary's gold watch. At the trial Mary gave evidence that she had both defendants home for tea one evening and that it was some time during the hour that they all spent together that she missed the watch.

Sam's Attorney launched a vicious attack on Mary's character whilst he was cross-examining her, putting to her amongst other things, that she was a dishonest person. Moreover, in his own statement from the dock, Sam alleged specific acts of dishonesty on Mary's part.

Joe's evidence was to the effect that whilst he and Sam were sipping their tea, Mary placed the watch on the table in front of them. According to Joe, a few moments afterwards he and Mary excused themselves from the living room and went to the kitchen, leaving Sam behind, and that on their return to the living room he did not see the watch on the table. Joe made it clear in his evidence that he was not saying that Sam took the watch as he never saw him do so but that he expected every sensible person to draw the obvious conclusion.

/(a)....

(a) The prosecution proceeded to adduce evidence of Sam's previous convictions for larceny; and

(b) Sam's Attorney was allowed by the trial judge to cross-examine Joe about previous convictions for bigamy.

Advise on the purpose and propriety of the course adopted at (a) and (b).

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QUESTION 3

Dr. Bogus was charged with indecently assaulting two patients of his, Dahlia and Daffodil, on January 1, 1976. The offence in respect of Dahlia was alleged to have taken place at 10.00 a.m. and that with regard to Daffodil at 2.00 p.m.

Dahlia's evidence at Bogus' trial was that after her dental treatment was over and just before committing the assault, Dr. Bogus waved his hand across her face, glanced at his watch and with a look of glee on his face, rolled up his shirt sleeves, unbuttoned the top button of his shirt and rolled up his trousers' legs. Dahlia continued to say that within a matter of a minute after Dr. Bogus completed the assault, his nurse opened the door of the room where they were, without knocking, and asked if she could send in the next patient.

Daffodil's evidence as to what Dr. Bogus did was in identical terms with Dahlia's evidence as stated above, save that Daffodil made no mention of seeing a look of glee on Dr. Bogus' face, nor did she see him roll up his trousers' legs. However, before he assaulted her, Dr. Bogus, after looking at his watch, rubbed his hands together and danced a jig very briefly.

(a) How was the trial judge likely to have responded to a request by the prosecution that he should direct the jury that when considering the charge concerning the assault on Dahlia they were entitled to consider Daffodil's evidence of the things she said Dr. Bogus did in the course of assaulting her?

(b) How will the trial judge have directed the jury if he did not permit Dahlia to give sworn evidence, having determined that she was of tender years and did not understand the nature of an oath?

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QUESTION 4

After securing bail on a charge of possessing ganja, Bengie made haste to his Attorney, Ginnal, and enquired as to his chances of securing his acquittal inasmuch as he felt that his having purchased the herb "wholly and solely for medicinal purposes" the police had no good reason to charge him. In an endeavour to convince Bengie of the weakness of his case, Ginnal told Bengie that he (Ginnal) had "a sizeable quantity of the stuff in a basement" at his house and that he too had it "wholly and solely for medicinal purposes", but that if ever he were caught he could not dare put forward such a ludicrous defence. Feeling that he had a hopeless case, Bengie rushed from Ginnal's office straight to the nearest police station and reported the discussion he had with Ginnal. The police raided Ginnal's house, found the ganja and charged him with its possession.

At Ginnal's trial he is alarmed to find that the two chief prosecution witnesses are his own wife, from whom he had been separated for several months before his arrest, and Bengie - the former is going to give evidence that Ginnal had told her that he had gone into the ganja trade and he needed the use of the basement to store it and that if he didn't get her co-operation he was going to chop off her head; the latter is going to relate the things Ginnal said when he consulted him.

Advise whether Ginnal's Attorney can successfully urge the exclusion of these two witnesses from giving evidence of the matters referred to above.

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QUESTION 5

Hopeful is charged with the murder of his mistress, Girlie. The prosecution propose to call two witnesses, Mel and Gwen, and the defence contemplates calling Steed.

The evidence Mel is able to give is to the effect that he came upon Hopeful standing over the prostrate, bleeding and dismembered body of Girlie and he said to him: "Hopeful, why you did this to her?" He made no reply.

The evidence Gwen will give is that at midnight whilst resting in her apartment next door to Girlie's, she heard sounds coming from Girlie's room as if she was quarrelling with a male person. Gwen further heard a thud like the blade of an axe striking a wooden block, a door slam and footsteps as if someone had left the room. Seconds afterwards she heard Girlie's voice say: "Look how Hopeful come chop off my hand and I don't do him anything and he said he is coming back to chop off

/my head"...

my head!" As she was about to telephone the police, Gwen heard another loud thud like the one before and Girlie called out: "Gwen, I hope you can hear me for see what Hopeful has done to me and I know that this is the end of me!"

Steed's evidence is to be that he saw Girlie leaving her room with her arms severed and she said to him: "Steed, come with me let us go and look for Hopeful, because see a total stranger come in on me and chop off my two hands".

Advise:

- (a) Can the jury be directed to consider Hopeful's silence as a factor indicative of guilt?
- (b) Is the evidence of Gwen and Steed admissible?

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#### QUESTION 6

Constable Eager, who has just graduated from training, was patrolling the highway on his motorcycle when he observed a motor car speed past him. He gave chase and observed the car hit a pedestrian who died instantly. For some distance the car was doing a good thirty miles per hour above the speed limit. After causing the car to stop, Constable Eager was rather surprised to find that it was the local Vicar at the steering wheel, whereupon he said to him: "Speeding eh Vicar! And manslaughter to boot. I scarcely need tell you good Padre, that it would be better for you to speak the truth." The Vicar, in deep distress and embarrassment replied: "All right Constable. I know I am guilty for I must have been doing at least 60 miles per hour, but I feel I can leave it to you to temper justice with mercy." Constable Eager replied: "Sorry Vicar, this is my first case and believe me, I can't just throw it away like that."

Constable Eager arrested and charged the Vicar for manslaughter and exceeding the speed limit contrary to the relevant section of the Road Traffic Act.

On reflection, the Vicar feels that he must in all conscience contest the case because his speedometer was not working and he acted without thinking when he confessed to manslaughter, and exaggerated his speed, simply because he did not think the young constable would have had the nerve to prosecute him.

If you were the Vicar's Attorney, what would be your submissions in an endeavour to prevent Constable Eager disclosing the Vicar's admission of guilt?

/Would it ...

Would it make any difference if the Vicar had informed you that he made no statement whatsoever admitting guilt to these charges?

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QUESTION 7

(a) During the hearing of his petition for divorce on the ground of cruelty, Feeble was allowed to give evidence that he was beaten by his wife on at least half a dozen occasions over a period of a few months and that on each occasion he telephoned his doctor who lived several miles away, told him of the assaults and resultant injuries and asked for and obtained his advice on how to treat these injuries himself.

Advise as to whether it was proper for Feeble's Attorney to elicit from him all of this evidence.

(b) At his trial on a charge of rape, Smiley's Attorney put to the complainant that on previous occasions to the incident in respect of which he is charged, she voluntarily allowed Smiley and his brothers to have sexual intercourse with her. The complainant emphatically denied this and in the course of presenting the case for the defence, Smiley's Attorney sought to call Smiley's brothers to give evidence to substantiate this allegation. The trial judge remarked that he found this attempt to adduce this rebutting evidence as totally outrageous and he precluded the defence from calling Smiley's brothers.

Is the trial judge wholly correct in his action?

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QUESTION 8

(a) At Millie's trial, which was taking place one year after the date of the offence, a defence witness, Jackie, gave evidence that shortly before the chief prosecution witness, Bloggs, went into the witness box he was in the bathroom adjacent to the courtroom, reading from a document which he afterwards discarded. Jackie said that she picked up the document and kept it and later found that its contents were in identical terms with the evidence given by Bloggs.

Advise as to whether this disclosure should cause Bloggs' evidence to be excluded from consideration by the jury.

/(b)....

(b) Another prosecution witness at Millie's trial wished to refresh her memory from a tape recording she made of a conversation between Millie and another inmate in a prison cell.

In what circumstances would the trial judge give permission for this witness to do so?

(c) Arthur has sued Dennis for one month's supply of kerosene oil and he seeks to adduce in evidence an exercise book kept by his delivery man, now deceased, in which he recorded the amount of oil he delivered to Dennis' place each week.

Will the court permit Arthur to adduce in evidence this exercise book?

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