

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

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FIRST YEAR EXAMINATION 1979

EVIDENCE AND FORENSIC MEDICINE

Friday, June 15, 1979

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) In answering any question a student may reply by reference to the Law of Jamaica, Bahamas or Belize, 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. It is alleged that a man was shot with a shot-gun and a rifle within a range of twelve (12) inches. How would the entry wounds appear on an external post-mortem examination?
- OR B. A fresh body was found floating in a river and it was alleged that after manual strangulation it was thrown into the river. How will the pathologist establish the cause of death as asphyxia due to strangulation?

QUESTION 2

Pablo is charged with stealing the four wheels of Juan's sports car which was parked in the same yard where Pablo lived. The prosecution plan to call as a witness Paula who lives next door to Pablo, to say that at 3:00 a.m. on January 1, 1979, she heard the sounds of a car being dismantled and she overheard the following exclamation: "Pablo, are you really stealing the wheels of your friend's car in the presence of me your mother! You have just taken off two and you are now taking the other two." Paula will also say

that though she listened very carefully she did not hear Pablo make any reply. She will further say that twenty minutes later when Pablo was at a pipe in the yard washing grease and dirt from his hands she said to him: "Pablo how do you feel after you have just stolen all four wheels of your friend's car right in front of your mother?" Paula will say that again Pablo remained silent.

Advise on the admissibility of the evidence to be given by Paula, and the directions the trial judge should give to the jury in regard to the evidence.

QUESTION 3

(1) Rufus is charged with attempting to murder Nova by strangulation. On the evening of the day on which Rufus was committed to stand trial, Rufus met Nova at a party held at a mutual friend's home.

Rufus and Nova met regularly after this by arrangement and eventually married each other the day before Rufus' trial was to take place. That same night Rufus said to Nova: "I take it that now that we are married you are not going to give evidence against me tomorrow." Nova replied: "I have no control over the matter. It is Regina v Rufus Grimes. In any event I believe I have a duty to society to see that you are punished for the wrong you have done to me, that is if the jury find you guilty. I am sorry Rufus but I am going through with it."

At Rufus' trial Nova was called as a witness but she broke out in tears and said that she was not going to give evidence against her husband. The trial judge rebuked her for the stand she was taking. He told her that the matter concerned the State and one's duty to society and that he was not going to allow any marriage of convenience to thwart the course of justice. Nova proceeded to take the oath ^{and} to give her evidence. Rufus was convicted and sentenced.

Advise Rufus as to any grounds of appeal.

(2) At Destry's trial on a charge of illegal possession of ganja contrary to the relevant statutory provision, the evidence adduced by the prosecution was through its sole witness, Sergeant Sharp and it was to the following effect:

On January 1 Sergeant Sharp along with other policemen went to premises at 40 Poppy Lane and carried out a search of an apartment occupied by Destry as a result of which a quantity of ganja was found. No warrant was ever issued authorising the search of

Destry's apartment and the search was carried out in spite of his protestations that what the police were doing was illegal. Sergeant Sharp said he felt justified in what he did even though he had no warrant because he was in the neighbourhood where Destry lived and he was overcome by a strong feeling that Destry had had a quantity of ganja delivered to his apartment and if he had not raided the apartment when he did, Destry would have got rid of the drug within a matter of minutes.

Advise on the admissibility of this evidence.

QUESTION 4

EITHER (1)

(a) Norbert has sued Calvin for negligently damaging his car. At the trial of the action, Norbert called a witness, Vocal, who said the following:

"I was standing about two chains from where the accident took place. As I heard the collision I turned around and saw one vehicle upside down and the other wrapped around a light pole. Seeing this, it became clear to me how the accident had occurred. It was obvious that Calvin was drunk, he was not driving at a reasonable speed and he was not exercising due care and attention."

Advise as to the propriety of Vocal giving evidence in these terms.

(b) Cosmos has been sued by a number of passengers who were injured when one of a fleet of buses owned by him went over a precipice. Immediately after the accident, Cosmos wrote his mechanics in the following terms:

"This is the third vehicle in my fleet that has gone over a cliff in three days. We have to get to the heart of the problem. Investigate the matter and send me a full report straightway. Pass it through my lawyers so that they can make a copy for their files."

The mechanics routed their report through Cosmos' lawyers who before sending it on to him, wrote a note on it in these terms:

"Cosmos, you are in big, big, trouble with this one".

The Attorneys for the Plaintiffs have caused a Subpoena to be served on Cosmos ordering him to produce at the trial the report made by the mechanics.

Advise Cosmos as to whether there is any basis on which he can refuse to produce the document.

(c) Gina and Lolita have been on bad terms for several months and the situation worsened when Gina's car ran into the back of Lolita's. As soon as she got home Gina wrote a letter to Lolita in these terms:

"There is something I want to tell you but to protect myself I have to do so 'without prejudice' otherwise I am sure you would try to use it against me in court. When I ran into the back of your car this morning, I had every intention of making a complete job of it so that it would never ever be fit to be on the road again".

Lolita contemplates suing Gina and wishes your advice as to whether she will be able to overcome any objection from Gina to her making use of the letter in Court.

Advise her.

OR (2)

A, B and C were apprehended by a police officer in a side-street standing near a container packed in Miami with large quantities of cloth destined for a consignee in this country.

While in custody, A made a statement to the police implicating B in the theft of the contents of the container. The police read A's statement to B during B's interrogation. B said, "I don't know nothing about that". All three were charged with conspiracy to steal. When the charge was read out to B, the police officer said to B, "Do you wish to say anything?" B said, "No Sir, you have got it all there." At the trial A and C pleaded guilty.

The prosecution seek to prove that the goods found had been put into the said container by adducing copies of the bill of lading prepared in Miami since they are unable to produce the person who packed the goods in Miami.

- (i) Advise the prosecution as to the admissibility of:
- (a) the statement of A through the police officer
 - (b) the answer of B through the police officer
 - (c) the bills of lading through the clerk of the consignee company.

- (ii) What special directions, if any, should the judge give concerning the statement of A assuming that it were admissible?

QUESTION 5

(1) Damian and Xerxes are jointly charged with the murder of Bacchus. At the trial the evidence ran thus, (in part):- Jules, a witness for the prosecution stated that Damian and he had agreed to go to Bacchus' liquor store to steal a crate of beer. No sooner had they taken up the crate of beer than Bacchus appeared on the scene and Damian drew a gun from his waist and shot Bacchus. According to Jules, he did not know beforehand that Damian had a gun and there was no agreement between them to use any violence on anyone.

Another witness for the prosecution, Bacchulus, the seven year old son of Bacchus said that just before his father was shot, he saw Jules hand a gun to Damian. Damian in giving evidence in his own behalf stated that just before he entered Bacchus' liquor store he saw Xerxes enter the store with a gun in his hand.

Advise as to the directions the trial judge will have given to the jury with regard to any necessity for corroboration.

(2) Xerxes' attorney wished to cross-examine Damian as to his previous convictions for stealing, but was prevented by the trial judge from so doing.

Advise as to the correctness or otherwise of the judge's ruling.

QUESTION 6

Capone was charged with the murder of his employer and had been in the custody of the police for two days. His brother Jeeps went to the police station to seek bail for him. In spite of Jeeps' repeated requests, the police sergeant was adamant that Capone would not be granted bail. Eventually, Jeeps turned to his brother and said: "Cap, tell him the full story as to how it happened so he can let us go home. If you didn't do it there is no way he can keep you here one minute longer and he knows it." Much to Jeeps' surprise, Capone told him to go home and comfort their mother. Two hours later and just before the lights were to be put out, Capone confessed to the other occupant of the cell in which he was placed that he had strangled his employer.

Advise as to:

- (a) the admissibility of Capone's confession: and
- (b) the procedure to be followed at the trial on an objection being taken as to the admissibility of the confession.
- (c) whether at any stage of the proceedings Capone can be cross-examined as to the truthfulness of what is contained in the confession.

QUESTION 7

At his trial on a charge of selling spirits without having a spirit licence contrary to the relevant statutory provision, Easy was dismayed when the trial judge convicted him after hearing from Police Constable Principle, the only witness called by the prosecution, the totality of whose evidence ran thus -

"On January 1, 1979, at 6:30 p.m., I entered a bar operated by Easy at 20 Teetollers Avenue in the parish of Somewhere and saw Easy sell intoxicating liquor to a number of persons. I went up to the defendant and arrested and charged him with selling intoxicating liquor without having a spirit licence contrary to....."
(He quoted the relevant statutory provision).

What troubled Easy most was not just the brevity of Constable Principle's evidence but the further fact that he brought no supporting evidence, documentary or otherwise, which accounted for Easy's decision to say nothing when the trial judge had asked him which option he wished to choose: "say nothing, make an unsworn statement or give sworn evidence."

Advise Easy as to whether there was any proper basis for his conviction.

QUESTION 8

(1) Mrs. Turvey has sued her neighbour, Mrs. Wilson, in nuisance, the allegation being that Mrs. Wilson had placed a heap of stones on the sidewalk over which Mrs. Turvey had to walk to get to and from her home. On one occasion in attempting to negotiate the heap of stones, Mrs. Turvey fell and injured herself.

In the course of the trial, Mrs. Turvey's attorney sought to adduce evidence to show that other persons sustained injuries on account of the presence of the heap of stones on the sidewalk, but he was met with great resistance from Mrs. Wilson's attorney.

How will the trial judge have ruled on the matter and what considerations would have given rise to his so doing?

(2) Susan has brought affiliation proceedings against Jacob in order to secure an order for him to maintain her only child. Susan is quite worried as to how to establish the date of the child's birth which is material to her case, as she is an absent-minded and forgetful person. She has found amongst her papers a receipt signed by a taxi operator, who is now dead, acknowledging payment by her of a fare in the sum of \$50 for taking her to the hospital and back home. There is a note on the receipt in the same handwriting stating that Susan gave birth to a baby in the taxi cab on the way to the hospital on the date appearing on the receipt.

Advise whether the receipt and the note on it are admissible evidence of the child's date of birth. Can the child's date of birth be proved in any other way?

(3) Assuming that the document can be used for the purpose indicated in (2) how would it be adduced in evidence?
