

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1989

EVIDENCE AND FORENSIC MEDICINE

(Thursday, June 1, 1989)

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 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.
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QUESTION 1 (COMPULSORY)

(a) Name three types of abortion.

Which type of abortion is considered to be of natural cause?

(b) With regards to the medical examination of a rape victim, name three test samples usually taken for Forensic Laboratory **investigation**, the results being submitted to the court.

(c) Simple blood group investigation cannot positively implicate an alleged father in a paternity suit. However, it can rule him out as the father. If the man is group A, mother group A, and child group AB, could he be the possible father?

(d) In a murder trial, a witness for the prosecution stated that the defendant was holding the gun about one foot from the deceased man when he shot him. The pathologist in his deposition stated that an entrance gunshot wound was noted on the left side of the forehead. The circular wound was surrounded by marginal abrasion but no gunpowder deposit on the skin or in the subcutaneous tissues. Based on the medical report,

(i) What was the possible range of fire?

(ii) Did the pathologist's evidence corroborate the evidence of the witness?

QUESTION 2

(a) Hing was charged with causing death by dangerous driving. The prosecution's case was that he had been driving his car on a long, straight stretch of highway on a clear day at 4 o'clock in the afternoon when it veered to its wrong side and collided with an on-coming car. Three persons in this car were killed as a result. There was evidence that, when inspected shortly after the accident, Hing's car was in good mechanical condition, though the two front tyres were fractured and deflated, presumably as a result of the impact.

Apart from formal evidence as to the identification of the deceased and so on, the prosecution called no further evidence.

In his defence, Hing made an unsworn statement from the dock stating simply that he was driving perfectly normal immediately before the accident, that he could not remember anything else and that he was not guilty of dangerous driving. However, in his address to the jury, Hing's counsel canvasses a number of possibilities: that the accused may have fallen asleep; may have had a black-out; may have been stung by a bee or that his car may have suffered from a sudden unexplained mechanical defect. He concluded his address with a stirring reminder to the jury that they should "resolve any lurking doubts as to the cause of the accident in favour of the accused man".

In summing up to the jury, the judge congratulates counsel on "a brilliant exercise in hypothetical extravagance", but tells them that they should ignore most of his submissions as they were not founded on the evidence. The judge also states that it would have been the duty of the defence in any event to prove any of counsel's alternative accounts of the cause of the accident.

Hing is convicted and seeks your advice on whether he has good grounds of appeal.

Advise him.

(b) As a result of the accident described in (a) above and subsequent to Hing's conviction, a civil suit for negligence is brought against Hing by the estates of the deceased persons.

Advise on the relevance of the conviction and the burden and standard of proof in the civil action.

QUESTION 3

(a) During the course of a trial on indictment, the accused objects to the admission of a confessional statement attributed to him. A voir dire is held and, after the circumstances in which the statement was made have been fully explored, the judge admits the statement as voluntary. Later, on the resumed trial when the police officers who took the statement are again cross-examined by defence counsel, some damaging admissions emerge from them which cast some fresh doubt on the voluntariness of the statement. Defence counsel now asks the judge to reconsider his earlier ruling.

Can the judge do this? Of what significance to whatever ruling he might make is the fact that the jury has now heard the terms of the confession?

(b) While being questioned by the police in connection with various offences of house-breaking and larceny in the Liguanea area, Shifty asks the Sergeant and the Corporal who are interviewing him if he will get bail if he makes a statement. They answer affirmatively and Shifty asks to be left alone for a bit while he thinks it over. Two hours later, the Inspector in charge of the investigations comes into the room where Shifty is and asks him if he is ready to talk. "Yes", says Shifty; "does the promise of bail the officers made still stand?" he asks. "I don't know anything about that", replies the Inspector; "that's not my policy - all I want to know is if you're going to talk." The Inspector then leaves the room and sends in Shifty's wife, who has come to visit him.

After Shifty tells her what has been going on, she urges him to make a statement, saying "I'm sure they'll give you bail if you do and in any case I know that they are more lenient when people co-operate with them." Encouraged by his wife's words, Shifty calls the Inspector and makes a full confession.

At Shifty's trial for house-breaking and larceny, the confession is challenged on the ground that it was not voluntary.

Advise.

QUESTION 4

Lindon is charged with murdering Maria, his former girlfriend. The Crown's case is that on January 11, 1988, Lindon who was driving behind Maria, signalled her to pull over to the side of the road where they both stopped. Lindon got out of his car, went up to Maria's and stood by the driver's window speaking to her for over 25 minutes. They had stopped by the side of a busy intersection and were observed by several casual passers-by. Suddenly, two explosions were heard, whereupon Lindon leaped into his car and sped away from the scene. Maria was found slumped over the steering wheel of her car dead from gun shot wounds to the head. The following morning Lindon accompanied by his attorney-at-law attended a police station and handed over his licensed firearm. He was interviewed by a Police Inspector who asked, "Man, why you shoot the woman like that?" Lindon made no reply, but hung his head and started to cry loudly. He was subsequently arrested and charged with murder. His defence is that his gun went off accidentally while he was demonstrating a new feature on it to Maria.

Advise on the following:

- (a) What is the proper direction to the jury on the effect of Lindon's failure to answer the question put to him by the Inspector at the station? Would it make a difference if the question had not been asked by the Inspector, but by Maria's mother?
 - (b) What use can the prosecution make of the fact that Lindon has twice before been charged with murder and acquitted after a trial, has once been convicted of larceny as a servant and now gives sworn evidence in which he asserts that he is a man of impeccable character?
 - (c) Would it make a difference to your advice in (b) above if Lindon does not give sworn evidence but asserts his good character in an unsworn statement from the dock?
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QUESTION 5

Advise on the admissability of the evidence in the following cases:

(a) Andy is charged with arson of a shop in which he carried on business. The only evidence to contradict his alibi was that of a policeman, who swore that on approaching the shop some half an hour after the conflagration began, he heard a woman in the crowd of spectators exclaim to a passing motorist, "How come your place is burning and you are going away from the fire?"

(b) Bunny is charged with fraud in that he falsely represented to his customers that the flour he was selling was milled in Canada. At Bunny's trial the prosecution was allowed to exhibit as evidence several bags of flour in the front section of Bunny's shop with the inscription thereon: "Produce of Insula." Insula is not a place in Canada.

(c) Dagger is charged with the murder of his wife. A witness testifies at his trial that she heard gun shots and screaming inside the couple's room and on listening more intently she heard distinctly when the wife said, "Dagger, if you shoot me once more I am going to die!" Soon after there was a 'bang' and the wife came running out of the house bleeding profusely. She died within seconds.

(d) Hagar is charged with raping a young lady whom he was giving a ride in his car from Kingston to a remote part of St. Thomas. Her evidence is that he parked the car at a deserted spot and committed the offence. His defence is duress: the car, he says, was hijacked by gunmen, who robbed both himself and the complainant and ordered him to have sexual intercourse with her, upon pain of being shot. This evidence is admitted but after an adjournment in which the trial judge apparently reconsiders the matter, he returns to court and directs the jury to ignore any evidence of what the gunmen are alleged to have said to Hagar because such evidence is hearsay.

QUESTION 6

(i) Smart was charged on three counts of rape. The evidence for the prosecution was that each of three complainants had responded to advertisements in the leading week-end newspaper offering domestic employment. After telephone contact had been made, each complainant - over a period of two weeks - had been asked to meet her prospective employer in the public gardens where, he told each of them, he spent a considerable amount of his time composing poetry. All three complainants testified that after meeting a man whom they identified as Smart and after some discussion about the prospective employment, the offence of rape was committed in a deserted area of the gardens. Smart was arrested and charged with the offences after an identification parade. The police subsequently visited his home armed with a search warrant and found dozens of letters addressed to his home applying for domestic employment.

Smart's defence is one of mistaken identity and at his trial he objects:

- (a) to the counts relating to the three complainants being tried together because he says the evidence of each is inadmissible in relation to the charge in respect of the others; and
- (b) to the admissibility of evidence of the letters found at his home.

Advise the prosecution on both grounds of objection.

(ii) Discuss and distinguish between cases in which corroboration is required by law and by practice.

(iii) Advise what would be an appropriate direction to the jury on corroboration in (i) above.

QUESTION 7

(a) After long negotiations by letters headed "without prejudice" to settle a claim by Green against Black for damages, Mr. Benn, Black's attorney, wrote Mr. Aska, Green's attorney, stating:

" My client is prepared to settle this claim on a 50/50 basis, once your client's damages have been assessed."

To this letter Mr. Aska replied in the following terms:

" My client accepts your client's offer to pay half his damages and the only question now left to be settled is the quantum of damages. You shall hear from me shortly on this."

One week later Mr. Aska wrote Mr. Benn stating:

" My client's damages have been assessed at \$120,000 and your client is required to pay one-half of that sum."

Black thinks this sum is inflated and refuses to settle. As Green considers the letters passing between his attorney and Black's, inadmissible, he now claims the full amount of damages.

Consider the legal position.

(b) Three months ago a bus owned by the Public Transport Company Limited, for no apparent reason, ran off the road and several passengers were injured. The Managing Director of the company immediately appointed a firm of engineers to investigate and report on the cause of the accident. The report was requested with a view to preventing a recurrence of such an accident and for the purpose of obtaining legal advice in relation to any action which might be brought by the injured persons. On receipt of the report, the company sent a copy of it to their attorneys. Pat, one of the injured passengers has brought an action against the company claiming damages for negligence.

Advise Pat whether she can compel production of the report.

QUESTION 8

(i) What conditions must be satisfied before a witness may be permitted to refresh his memory from a document while giving evidence in court? Outline briefly the questions you would ask in order to lay the necessary foundation.

(ii) Outline the cases in which evidence of previous consistent statements is admissible and state the effect of such evidence. How is such evidence to be distinguished from corroborative evidence?

(iii) In what circumstances does a document which has been used to refresh memory become evidence?
