

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION 1981

EVIDENCE AND FORENSIC MEDICINE
Wednesday, May 20, 1981

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. Describe in detail what you know about a medicolegal autopsy. Outline briefly the importance of the autopsy findings in relation to their use in medical evidence.

OR B. Write short notes on:

- (a) Asphyxia
- (b) Firearm entry and exit wounds
- (c) Stab wounds
- (d) Natural causes of sudden death
- (e) Infanticide.

QUESTION 2

(i) What foundation must be laid before a witness can refresh his memory from a document in the course of giving evidence in the witness box? Outline briefly the questions you would ask in order to satisfy the requirements.

(ii) During the course of his evidence in a civil trial for damages for negligence, Professor Gold, a consultant orthopaedic surgeon and the plaintiff's doctor, is given permission to refresh his memory from his notes. Later, while he is being cross-examined, Mr. Brown, counsel for the defendant, asks to see the notes from which the doctor had refreshed his memory. Having looked at them and asked certain questions about various marks and symbols, etc. on the notes, counsel hands them back to the Professor and is about to continue his cross-examination, when the following exchange takes place:

HIS LORDSHIP: Just a minute, Mr. Brown, I'm not sure that the matter ends there. Mr. Smith (addressing counsel for the plaintiff) is there anything you wish to say to me?

MR. SMITH: Yes, milud, indeed....ah....ah....I think that my learned friend now has....ah....a bit of a problem....I mean....ah....it seems to me that he can't just call for the notes and look at them and ask all those questions and then leave it at that....I would think that there would have to be....ah....something more....

HIS LORDSHIP: (impatiently) Yes, yes, Mr. Smith, but you have to decide; do you want to ask him to do anything?

MR. SMITH: Ah....I see that milud....but....ah....with respect....it would seem to me to follow....

HIS LORDSHIP: (with some heat) Look, Mr. Smith, don't waste my time. Mr. Brown, do you wish to say anything?

What is the judge getting at and how should Mr. Brown reply?

(iii) You appear for the plaintiff in an action against a police officer and the Attorney-General claiming damages for malicious prosecution, false imprisonment and assault. The action arises out of the arrest, imprisonment and alleged maltreatment of the plaintiff on the night of May 30, 1980 and his subsequent prosecution for obstructing a police officer in the course of his duty and disorderly conduct. The plaintiff has been acquitted of these charges, hence the present action. The following emerges during his cross-examination by counsel for the Attorney-General:

Q: On the night when you were arrested and taken to the station, you saw the officer-in-charge there, did you not?

A: Yes.

Q: That would be Inspector Smith?

A: Yes.

Q: Indeed, it was he who prepared the papers when your brother came to bail you later that evening, was it not?

A: Yes, sir.

Q: Did you complain to him then about what you now claim is your illegal detention and the fact that the police officer had assaulted you?

A: No.

Q: Didn't think of doing so, eh?

A: No, sir, but....

Q: No matter. Now when you went to see your attorney the following day, you consulted him about the criminal charges, is that not so?

A: Yes.

Q: And you didn't tell him anything about assault or illegal detention the night before?

A: No, sir, but - if I could explain....

Q: That's quite alright, I think I understand very well; now, tell me this, were you an imaginative boy at school?

You object successfully to this last question on the ground of irrelevance and the cross-examination ends. You have in your brief a statement from Lloyd, the plaintiff's brother, which says that on the very night of his arrest the plaintiff complained to Lloyd about the "illegal and vicious manner" in which he had been treated at the station.

Can you now make any use of this statement and, if so, how and when?

QUESTION 3

(i) Explain the terms 'Burden of Proof' and 'Standard of Proof' as applicable to criminal trials.

(ii) L was convicted at the Circuit Court for obtaining money by false pretences. The case for the prosecution was that L had gone to a betting shop and placed bets on some horse races; after the results of the races were known, L or someone on his behalf substituted new slips with the names of the winning horses. L was identified as the man who placed the bets and had called for payment.

The trial judge in summing up said "You ought to be satisfied and that means that you should have that feeling of certainty that you would like to have in your own affairs because if you were going to do something concerning your own matters you would make pretty certain of the true state of affairs. You must be satisfied that is to say, pretty certain that these slips were changed because, if they were not, the whole structure of the case falls to the ground."

L wishes to appeal. Advise him.

QUESTION 4

Basso is charged with three counts of indecent assault involving three schoolboys of about ten years of age each. The offences are alleged to have been committed on the 5th, the 16th and the 21st April, 1981 respectively and on each occasion Basso is alleged to have gone to the boys' school, accosted one of them in the schoolyard and represented to him - falsely - that the boy's parents had sent Basso to take him home. On each occasion, Basso is alleged to have encouraged each boy to accompany him to the Public Gardens before going home and the offences are all said to have been committed there. By way of defence to each charge, Basso pleads mistaken identity and sets up an alibi.

Advise:

- (a) on the proper ruling where, at his trial, Basso's counsel moves to sever the indictment on the ground that the evidence of each boy is inadmissible on the charges in respect of the others;
- (b) on the issue of corroboration generally, where two of the boys give unsworn evidence and one, who appears to be more mature than the others, is allowed to give sworn evidence; and
- (c) in the light of the defence raised, whether any special onus rests on the trial judge with regard to the question of identification.

QUESTION 5

(a) In relation to an alleged confession, what are the respective functions of judge and jury?

(b) X is suspected of stealing property belonging to Y. He is further suspected of transporting the stolen property in a vehicle belonging to his employer, which he used without his employer's consent and which he later abandoned in a bush.

He refuses to answer any questions put to him by the police and Y decides to take action himself. He tells X that if he speaks the truth he (Y) will use his considerable influence to persuade X's employer to continue to engage him and to forgive him.

X thereupon admits the offences in relation to Y's property and his employer's vehicle and tells Y where he hid the property and what he did with the vehicle. The vehicle is recovered but Y's property is not found.

Advise the prosecution on the admissibility of X's statement.

*admissible if not person in authority
if it was employer's in address
if not present / acquiescence in statement
admissible*

QUESTION 6

(i) Dave is charged with robbery of \$500. At his trial, Jones, the complainant, is minutely cross-examined by Dave's counsel with a view to establishing that both Dave and Jones had in fact taken part in a joint venture to sell some ganja to an American tourist and that the \$500 was Dave's share of the proceeds thereof which Jones had wrongfully retained. Naturally, all of this is hotly denied by Jones.

Counsel for the prosecution has in his possession Dave's criminal record which shows that he has ten previous convictions for offences involving dishonesty. Advise him whether, in what circumstances and how he may make use of the record.

(ii) A and B are charged jointly with receiving stolen goods. Both accused give sworn evidence in their defence and while A's is a mere denial of the charge, B's is to the effect that he only went along with A for the ride and that, indeed, as soon as he realised that there was something suspicious about the goods, he had left; according to him A had been solely responsible. A's counsel immediately applies for leave to cross-examine B as to his bad record. However, this is refused by the trial judge, who says: "I can't see how that is going to take the matter much further." Both are convicted and A wishes to be advised of his chances on appeal.

Advise A.

Would your answer be different if the application to cross-examine B had been made by counsel for the prosecution?

- (iii) In (ii) above, could A's wife give evidence for the prosecution,
- (a) where her evidence implicates B alone or
 - (b) where her evidence implicates both B and A and there is evidence that the latter is a wife-beater?

QUESTION 7

(i) The accused Doolan was charged with robbery. The victim testified that he had been attacked by two men including Doolan, that Doolan had taken his wallet and both men had turned and run off down the road. The other man, subsequently identified as Tallis, apparently tripped and fell and was held some thirty yards away by a policeman on foot patrol who had witnessed the incident. In the meantime, Doolan had made good his escape, but the victim immediately identified Tallis as one of the two men who had robbed him. At the station Tallis, who subsequently pleaded guilty, gave a full written statement implicating Doolan as the prime mover in the robbery and, as a result of Tallis's cooperation, Doolan was arrested the following day and taken to the station where Tallis was being held in custody. There Doolan and Tallis were taken into the same room where the policeman in charge of the investigation handed Doolan a copy of Tallis's written statement and told him to read it. Having read it, Doolan looked over at Tallis for a few seconds - according to the policeman - angrily, and then moved suddenly in Tallis's direction as if to attack him shouting "You lousy bastard."

Advise on the admissibility in evidence at Doolan's trial - where his defence is mistaken identity - of the events at the police station.

(ii) Assume on the facts of (i) above that immediately after the robbery took place and while the two men were running away, the victim had heard a passerby call out, "Hey, Doolan, what's the hurry, man?" Is evidence of this statement admissible and, if so, to what end?

QUESTION 8

(i) A man enters hospital for the purpose of undergoing an operation. Before any operation is done the doctor in charge of the case draws up a report on the patient's condition (Report A). After the operation has been carried out, it becomes clear that something has gone wrong. The surgeon and nurses concerned make a report to the hospital authorities (Report B) pursuant to hospital regulations requiring them to do so in these circumstances.

Fourteen days later lawyers acting for the patient write to the hospital board alleging negligence in the carrying out of the operation; as a result the hospital authorities obtain a further report (Report C) from the surgeon and nurses. This last report is just in time for submission as well to the hospital board which has in the meantime become quite concerned about persistent rumours of widespread carelessness in the surgical wing.

Before the matter comes to trial, the plaintiff's lawyers seek discovery of all three reports. Advise whether this may properly be granted.

(ii) During the course of the accused's trial for larceny, counsel for the prosecution fortuitously comes into possession of a note apparently written by the accused to his counsel admitting an important allegation in the prosecution's case. The note was given to counsel for the prosecution by a police constable who had picked it up from the floor of the courtroom during the luncheon adjournment after having seen the accused write on a piece of paper which he passed up to his counsel earlier in the day. When the accused is cross-examined by counsel for the prosecution, he denies the allegation when it is put to him.

What use can counsel for the prosecution make of the note?
