

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION 1982

EVIDENCE AND FORENSIC MEDICINE

(Friday, May 21, 1982)

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.

QUESTION 1 (COMPULSORY)

EITHER A. What do you understand by the term "Asphyxia"?
Outline the different kinds of violent asphyxial deaths you know of, and describe the post-mortem appearances in any one of them.

OR B. Write short notes on:
1. Circumstantial evidence
2. Abrasions
3. Suicidal firearm injury
4. Post-mortem lividity
5. Head injuries.

QUESTION 2

(i) During the course of a civil trial for damages for negligence, the following exchange takes place while Professor Gold, the plaintiff's medical expert, is being examined in chief.

Mr. Brown (Counsel for the plaintiff): Now, Professor, did you examine the plaintiff at any time?

Prof. Gold: Yes, I did.

Mr. Brown: When was this?

Prof. Gold: I can't quite recall the exact date, but I think it was sometime in 1979.

Mr. Brown: What's that you have in your hand?

Prof. Gold: The plaintiff's medical records.

Mr. Brown: Well, have a look at them and tell us the exact date and what your findings were.

His Lordship: Mr. Brown! Surely you know better than that - you can't just do that!

Mr. Brown: What is your Lordship saying - that it is no longer permissible for a witness to refresh his memory?

His Lordship: You will just spare me your sarcasm - I say that there is as yet no basis for this witness to refresh his memory from any document and I so rule.

(a) What is the basis in the law of evidence for the judge's ruling?

(b) Advise Mr. Brown what line of questioning he should now take in order to retrieve the situation.

(ii) In what circumstances may leading questions be asked in

- (a) examination in chief;
 - (b) cross-examination; and
 - (c) re-examination?
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QUESTION 3

(i) Distinguish and describe, with examples, the legal burden of proof and the duty of adducing evidence; explain the relationship between them.

(ii) Section 16(1) of the Dangerous Drugs Act provides as follows:

(1) Every person who -

(a) removes any dangerous drug from the conveyance by which it is brought into the Island in transit; or

(b) in any way moves any such drug in the Island at any time after removal from such conveyance,

except under and in accordance with a licence in the Form D set out in the Schedule issued by the Collector-General, shall be guilty of an offence against this Act.

Dave, a portworker, is charged with removing a quantity of morphine from a cargo ship in the harbour without the appropriate licence contrary to section 16(1) of the Act. At his trial before a Resident Magistrate, prosecuting counsel calls evidence to establish the removal of the morphine and then is about to call an officer of the Collector-General's department to establish that no licence had been issued to Dave. However, counsel is stopped by the Magistrate who observes that such proof is in his view unnecessary.

Advise as to the correctness of the Magistrate's observations.

QUESTION 4

(i) During the course of a trial on indictment, the accused objects to the admission in evidence 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 by now heard the terms of the confession?

(ii) 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 investigation 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're more lenient when people co-operate with them." Encouraged by his wife's words, Shifty calls the Inspector and makes a full confession.

Advise on the admissibility of the confession when it is challenged as being involuntary at Shifty's trial for house-breaking and larceny.

QUESTION 5

Dave, a sailor, was charged on two counts of an indictment with raping two young women - A on December 18, 1981 and B on the following day December 19, 1981. The evidence of both ladies as it appeared on the depositions was to the effect that on the respective days Dave offered each of them a lift in his white Mini 1000 car outside the main entrance to the University. When they accepted, he immediately commenced to question them about intimate matters, such as whether each had a boyfriend and whether the boyfriend was 'up to the mark', etc. On each occasion as they got to the entrance to a posh residential suburb, Dave turned into it suddenly and, before they knew what was happening, had parked at a deserted spot. Each lady said that Dave then donned a 'sailor hat', switched on a tape recording of a recent popular hit song by the Mighty Sparrow and proceeded to commit the offence charged.

The prosecution also proposes to call three other women with a view to establishing that around Christmastime 1981 there was a man in the University area who was given to accosting and trying to pick up youngish women and that they had each refused a lift from him on separate occasions. They will say that Dave 'resembles' the man.

- (a) Advise -
 - (i) whether the evidence of A is admissible in relation to the charge against Dave for raping B and vice versa; and
 - (ii) whether the evidence of the other three young ladies is admissible at all.
- (b) Would different considerations arise if Dave were charged with homosexual offences?
- (c) Advise the prosecution on the question of corroboration.

QUESTION 6

During the course of A's trial for murder allegedly committed during an armed robbery, B, the chief eyewitness for the prosecution is vigorously cross-examined by A's counsel with a view to establishing that his (B's) identification of A as one of the robbers was motivated by spite and ill will towards A and that B had not in fact witnessed the incident at all. At a point in the cross-examination it is in fact put to B that he is "a notorious perjurer".

The prosecution has in its possession information that A has in fact been convicted of four previous offences involving violence and one for dangerous driving.

Advise what use may be made by the prosecution of this information in each of the following circumstances:

- (i) Where at the close of the prosecution's case A gives an unsworn statement from the dock in which he repeats his counsel's attack on B and asserts in detail his own good character.
- (ii) Where at the close of the prosecution's case he gives sworn evidence in which he does not repeat counsel's attack on B, nor does he assert his own good character.
- (iii) Where at the close of the prosecution's case, an unsuccessful no-case submission having been made, he elects to remain silent and to rest on his submission, calling no witnesses.

QUESTION 7

(i) At Michael's trial for murder of Percival the only evidence implicating him is that of Percival's sister, Portia, whose evidence is to the effect that upon hearing gunshots outside the house she shared with Percival she dashed outside where she saw Percival lying in a pool of blood. According to Portia, Percival said to her "Michael shot me, the bastard; if only I wouldn't die now, I'd get him for this, but I fear that you're going to lose your brother, Miss P." He then lost consciousness and died in hospital three hours later.

Advise on the admissibility of Portia's evidence; if it is admissible what is the trial judge's duty in summing up to the jury as to its effect.

(ii) Smith was indicted for illegal possession of a firearm and shooting with intent at the complainant about 150 metres from the accused's brother's home.

During the trial in the Gun Court, the complainant stated on oath that just after the firearm had been discharged a passerby pointed to the brother's house and said: "The gunman ran in there". At this point, Counsel for the Defence objected to the evidence of this statement and the following exchange occurred:

Crown Counsel: My Lord, I don't understand my learned friend's objection, surely what was said was relevant and material. I do wish Counsel would stop making frivolous objections.

His Lordship: (turning to Counsel for the Defence) Well Counsel, can you support your objection?

Is Defence Counsel on strong ground?

How should he respond?

QUESTION 8

Saul was charged with raping Shirley. During the trial, while Shirley was giving evidence, she was asked (i) if she had had voluntary sexual intercourse repeatedly with the accused on previous occasions and (ii) whether she had ever indulged in sexual intercourse with persons other than the accused.

(a) If her answers to the above amount to a complete denial, will evidence in rebuttal be allowed?

(b) Counsel for the prosecution now seeks leave to attack the character of Saul on the ground that he (Saul) had attacked the character of the complainant. How should the judge deal with this point?
