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NORMAN MANLEY LAW SCHOOL

Council of Legal Education

FOR REFERENCE ONLY

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS 1983

EVIDENCE AND FORENSIC MEDICINE

Wednesday, May 18, 1983

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. (i) Classify mechanical injuries (ii) Outline the role of a medical witness in establishing evidence in a case of

- (a) Road traffic accident;
- (b) suicidal stab wound;
- (c) homicidal firearm injuries

OR B. Write short notes on:

- 1) Hanging
 - 2) Incest
 - 3) Adipocere
 - 4) Head injuries
 - 5) Diatoms
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QUESTION 2

- (i) Describe and distinguish, with reference to relevant authorities, the legal burden of proof and the duty of adducing evidence.
- (ii) Examine critically the following direction to a jury in a prosecution for murder, in which the defences of self-defence and provocation have been run.

"And now I come, members of the jury, to the defence and to the evidence given on behalf of the accused. Before I summarise the evidence, however, I should give you some idea of how to approach it. You will recall that I told you a few minutes ago that it is for the prosecution to prove the case against the accused and that the accused was not required to prove anything. That is indeed the law, but where, as here, the accused does give evidence and calls witnesses in his defence, you need to consider it carefully because although the defence need not prove anything, the evidence should carry a degree of cogency before you can act on it. In other words, in considering the defence evidence, you need not look to see if it satisfies you beyond reasonable doubt, because the law does not put such an onus on the accused but will be satisfied with some less rigorous standard."

- (iii) In what cases does the accused in a criminal trial bear a burden of proof and is this burden legal or evidential?

QUESTION 3

- (a) Hugh was indicted at the Circuit Court for wounding with intent committed against his wife. The first witness called was Mrs. Hugh and the following exchange took place:-

Counsel for the Defence: "M'Lord I object to this witness giving evidence, as it is clear from all the authorities that she is incompetent and therefore cannot give evidence against her husband."

Counsel for Prosecution: "M'Lord, I submit that the position taken by my learned friend is not correct in law. It is clear that on the authority of R v. Lapworth [1931] 1 K.B. 117, that the wife is both competent and compellable as a witness against her husband, in any event she has already given evidence at the preliminary enquiry and her deposition is before this court."

How should the trial judge rule?

- (b) Can the husband or wife of an accused ever be called as a witness for the defence without the consent of the accused?
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QUESTION 4

Mrs. Vieria returned unexpectedly from a holiday to find her video set missing. Racheal, her housekeeper, was unable to account for it even though she had been left solely in charge of the house. Mrs. Vieria locked her up in the housekeeper's bedroom for six hours and then said to her

"Racheal, don't be so stupid, you are nothing but a little thief and you're making this unpleasant for everyone. I can never forgive you if you lie to me. What have you done with my video?"

Racheal then broke down in tears and said, "Mam, you've been so good to me and I shouldn't have really done this. I gave the video to my boyfriend, Bob, as he was hard-up."

Mrs. Vieria then called in the police and both Racheal and Bob were charged.

- (a) Can Mrs. Vieria give in evidence the **confession** made by Racheal?
- (b) Should the trial judge permit the prosecution to give evidence that in consequence of the confession Bob was interviewed and led the police to where the video was hidden?
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QUESTION 5

(a) Daniel is charged with indecent assault committed against Michael, aged 12. The offence is alleged to have taken place at Daniel's home when he invited in Micheal and two other friends, Peter aged 10 and Albert, aged 7 for some lemonade. At the trial, Micheal gave sworn evidence of the offence, but Peter and Albert both gave unsworn evidence of factual matters offered by the prosecution as corroboration of Micheal's story. The defence submitted that there was no case to answer on the ground that, as there was no other corroborative evidence but that of Albert and Peter, then Daniel should not be called upon for a defence as their unsworn testimony could not be corroboration. What ruling should the trial judge give?

- (b) What would be the position if Micheal's evidence was unsworn as well as Peter's and Albert's?
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QUESTION 6

(a) John was charged with breaking and entering a factory and stealing a number of radiograms. Also charged with him was one James who had given a written confession to the police and subsequently pleaded guilty at the trial. John pleaded not guilty and at his trial a police officer testified, over objection, that in John's presence and hearing in the C.I.D. interrogation room another police officer had said to James: "Do you see anyone here that was with you when you broke into the factory that night?" and that James had replied, indicating John, "Yes, he was"; that at the time this statement was made James was no more than 3 or 4 feet from John and that after the statement had been made John looked at James for a few seconds and then looked away without saying anything.

How should the trial judge direct the jury to approach this evidence?

(b) Handy is charged with larceny from the person. The complainant's evidence is that he felt a hand in his pocket and as he turned around he saw a man whom he later identified as Handy running away with his wallet in his hand. He cried "thief, thief!" and chased the man into a nearby schoolyard where he was forced to abandon the chase because of the number of children in his way. As he was entering the schoolyard, however, and while the pickpocket was still in his sight, he heard several of the children cry out, "is Churchill, is Churchill!" and they continued to assert this even after the man had disappeared.

Advise on the admissibility of evidence of what the children said (they are not called). If such evidence is in fact admissible, would it be correct for the judge to direct the jury that "it is an item of real evidence, not proof of the fact itself, but supportive of the complainant's story"?

QUESTION 7

(a) Makin is charged with larceny as a servant. The prosecution has in its possession details of his two previous convictions for that offence and one previous conviction for causing death by dangerous driving. What use may be made of this information in each of the following situations?

(i) Where Makin, by his cross-examination of the prosecution witnesses, suggests that he is a person of good character and also makes an unsworn statement from the dock to the same effect.

(ii) Where Makin, by his cross-examination of the chief prosecution witness, his former co-employee, suggests that it is in fact he (the co-employee) who committed the theft for which Makin is charged. Makin again makes an unsworn statement from the dock.

(iii) Where, in (ii) above, Makin gives sworn evidence.

(b) To what extent if at all does a trial judge have a discretion to refuse to permit cross-examination of an accused person as to character even when it is permissible under the terms of section 1(f) of the regional equivalents of the Criminal Evidence Act (U.K.)?

QUESTION 8

(i) Jones was charged with murder in circumstances where it was alleged that he had deliberately driven his motor car at the deceased, a young woman, who was riding a motor cycle, and knocked her down in the road. His defence was that the collision was accidental. Over his counsel's strenuous objection, evidence was admitted that on the day before the offence Jones had separately knocked down two other female cyclists similarly with his car and assaulted each; and that on the day following he had similarly knocked down another female cyclist and stolen her handbag; also that he had driven straight at three different parties of police officers who had tried to stop him.

Jones is convicted and wishes to appeal on the basis that the above items of evidence were inadmissible. Advise him.

(ii) The plaintiff in a suit for damages for libel had been convicted of robbery some years before. The present action arose out of the fact that the defendant, a newspaper publisher, had published a statement that the plaintiff had committed robbery. The defence was justification.

Advise the defendant on the use, if any, to which evidence of the conviction may be put.
