

copy 1

E13

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

NORMAN MANLEY LAW SCHOOL LIBRARY
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7, JAMAICA

FOR REFERENCE ONLY

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1986

EVIDENCE AND FORENSIC MEDICINE
(Thursday, May 22, 1986)

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 are the different kinds of mechanical injuries?
Describe in detail any one of them.

- OR B. Write short notes on:
- (1) Post-mortem lividity;
 - (2) Circumstantial evidence;
 - (3) Sexual offences;
 - (4) Asphyxial deaths;
 - (5) Forensic toxicology.

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 had 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 normally 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 concludes 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 could ignore most of his submissions as they were not founded in 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) Doolan was charged with larceny as a servant from the firm of Attorneys-at-Law to whom he was employed. He was arrested at his work-place and taken to the CIB headquarters, where he was questioned by a Detective Sergeant for some three hours. During this period he consistently denied the allegations but, more and more querulously as time passed, he kept asking the Detective Sergeant if he could be permitted to use the bathroom. In response to this, the Detective Sergeant merely observed that Doolan "seemed to think that (he) was at the Pegasus". After about two and a half hours of questioning, Doolan asked the Detective Sergeant if he could be considered for bail if he made a statement. The Detective Sergeant's response was as follows:

"I don't know about that - you will have to discuss that with the Inspector when he gets here. Anyway, you seem inclined to be more helpful now, so let's take a break."

The Detective Sergeant then calls a constable and directs him to take Doolan to the bathroom. Upon his return, greatly relieved, the questioning continues and in due course the Inspector arrives. Doolan renews his question about the bail, to which the Inspector replies that he cannot make any promises, but he "will talk to the Clerk of Courts" when the matter is mentioned. Doolan then makes a full confession.

Advise as to the admissibility of the confession at Doolan's trial.

(b) In challenging the admissibility of a confessional statement at his trial for murder, Tallis gives evidence on the voir dire. He testifies that after making the statement he was not cautioned by the police officer who took it and that he was not aware that in a matter of this nature he was entitled to refuse to answer questions. Had he been made aware of this by being cautioned, he said, he would not have said anything without first consulting his attorney-at-law. Apart from this, there was no other challenge to the statement on the voir dire.

Advise on the admissibility of the statement.

QUESTION 4

(a) Rodwell was charged under the Public Offences Act, an ancient and little known public order statute. He was charged with being a rogue and a vagabond "for that he was armed with a pistol with felonious intent, namely to murder his wife". At his trial, his wife gave evidence for the prosecution against him and he was convicted.

Advise Rodwell.

(b) Boyne was charged with unlawfully wounding his wife, who was the only witness called at the trial on behalf of the prosecution. In the middle of her examination-in-chief - and after a weekend adjournment - Mrs. Boyne informs the judge that she "cannot go on" with her evidence, as it is putting too much strain on her family life. You appear for the Crown and the judge requests your assistance. What would be your submission?

(c) The accused was charged with an indecent assault on a young girl of 9 years. When she was called to give evidence the trial judge investigated her competence as a witness by questioning her as to her belief in and knowledge of God and as to her understanding of the importance of telling the truth. The judge decided that she was not incompetent, but did not have a sufficient belief in the existence of God to be permitted to take a binding oath. He therefore ruled that she should affirm, which she did, and the accused was in due course convicted. He wishes to appeal on the basis of this ruling by the judge and consults you.

Advise him.

QUESTION 5

Before and during his trial for indecent assault, Amos observed a number of incidents which made him feel after his conviction that there had been irregularities because he had no legal representation and lacked knowledge of the law.

These incidents were as follows:

- (i) One of the prosecution witnesses spent the whole period (out of court) before the case was called reading over and over a document which obviously contained evidence he was going to give in court.

- (ii) In the course of the trial another witness took a document from his pocket and looked at it on several occasions before answering the questions asked.
- (iii) The complainant in the case informed the court whilst giving her evidence that she had made a complaint to her aunt about the indecent assault Amos had committed on her.
- (iv) The trial judge prevented Amos' father from giving evidence that Amos had told him that his hand had accidentally touched the complainant where she said he had. This was the line of defence Amos advanced and prosecuting counsel put it to him that he had just fabricated the story.

Amos now consults you and seeks your advice as to his chances on appeal.

Advise him.

QUESTION 6

J Petula, a ten-year old child at boarding school had gone to bed in her dormitory. As she was not yet soundly asleep she was easily awakened when she felt that she was being indecently assaulted. She quickly grabbed the hand of her assailant and was amazed to find that it was that of her headmaster, Mr. Benson, who was equally surprised to see Petula wake so quickly. She asked him why he did that to her and he remained silent.

In the course of the investigation of the case it is discovered that on three previous occasions, each a week apart, a different girl was indecently assaulted in the dormitory and by the time each awoke the assailant was on his way out before his face was seen. In each case each girl on waking found a box of expensive chocolates and a red rose at the side of her bed just as Petula did when she got up and grabbed the hand.

Benson is charged with indecent assault on Petula and the three other girls.

Advise as to:

- (i) Any special directions the trial judge has to give the jury with regard to the girls' evidence;
 - (ii) Whether any use can be made of the assaults on the other girls in proving that on Petula;
 - (iii) How the trial judge should direct the jury to treat the headmaster's silence in response to Petula's question.
-

QUESTION 7

(a) During the course of his trial for larceny, Luke had, during his examination-in-chief, rather carelessly, let fall from his lips the following statement:

"I have had a few brushes with the law but generally speaking I have tried to live an upright life by following the straight and narrow pathway."

Before he had gone far in his cross-examination of Luke, prosecuting counsel proceeded to engage him in the following encounter:

Counsel: You spoke about brushes with the law, Luke, but I put it to you that they were no mere brushes.

Luke: I don't know what you are talking about.

Counsel: You only want the court to hear about the brushes but I think they need to know the canvas - the total picture of you. To be clear, I am talking about (i) the conviction you have for raping Melba three years ago; (ii) your fortunate acquittal when the jury could not agree last year at your trial on a charge of indecently assaulting Elfreda and (iii) the report by your former employer last month in which the investigation is not yet complete that you stole some sacks of flour from his warehouse.

Luke: You are a con-artist, a conman, not a lawyer. Don't try that.

Advise whether it was proper for counsel to question Luke along these lines.

(b) Mutt and Jeff are jointly charged with larceny of Miss Fortune's expensive diamond necklace. They had been employed by Miss Fortune for just one night - 6.00 p.m. to 6.00 a.m. - to guard the necklace in her living room while she was sleeping in her bedroom. As soon as she woke bright and early the next morning she entered the living room to collect the necklace and to put it on, but it was nowhere to be found.

At the trial Mutt gave no evidence but Jeff did and in the course of so doing said he had nothing to do with the disappearance of the necklace. He testified that he recalled that during the night, about midnight, he had left the living room 'to answer nature's call' and that he was away for not more than half of a minute and that he did not recall seeing the necklace on his return.

(i) As counsel for Mutt, can you make use of your knowledge of the fact that Jeff has several convictions for larceny?

(ii) Would it make a difference to your answer if Mutt was charged with larceny of the necklace and Jeff with receiving it?

QUESTION 8

(a) A 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) B is charged with fraud in that he falsely represented to his customers that the flour he was selling was milled in Canada. At B's trial the prosecution was allowed to exhibit as evidence several bags of flour found in the front section of B's shop with the inscription thereon: "Produce of Insula" which 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.

Advise on the admissibility of the evidence in (a) to (d).
