



NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1987

EVIDENCE AND FORENSIC MEDICINE
(Monday, May 18, 1987)

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)

(i) Mr. A was allegedly shot by Mr. G and was admitted to the hospital with a gunshot wound to the abdomen. He had immediate surgery, the bullet was removed and the injuries repaired. However, during his recovery at the hospital, he developed the complication of pneumonia and died two weeks after being admitted.

What is the CAUSE and the MANNER of death?

(ii) Gunpowder deposition around an entry gunshot wound would be consistent with what range and approximately what distance from the muzzle of the gun to the extended victim?

(iii) In a paternity case, the alleged father denied that the child was his. Blood was taken from all three persons involved and sent to the laboratory for blood group determination. The following results were received:

- 1) Father Group A
- 2) Mother Group O
- 3) Child Group B

Was he the true father?

- (iv) Describe what is a vaginal swab and a vaginal smear.
 - (v) Give the difference between a contusion and a bruise, if any.
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QUESTION 2

Harold is charged with the murder of his wife, Wendy. The evidence which the prosecution intends to introduce at the trial is as follows:

One year ago Wendy left Harold and went to live with Ken. A few weeks later Harold said to Oris, Wendy's sister: "Tell Wendy I say that she had better come back home. It's her life she is playing with".

One evening six months ago at about 3 p.m., whilst in his study upstairs, Ken heard Wendy, who was downstairs, say "What you're doing in Ken's house. I thought you were told not to come here". Ken called out, "Wendy, who is that?" and Wendy replied "Harold. But it's alright. I chased him away".

At about 6:45 p.m. that day Ken who was still in his study heard Wendy scream from downstairs "Oh God! No! Don't shoot me!" followed by an explosion. Ken immediately rushed downstairs and saw Wendy lying on the floor of the kitchen bleeding from her abdomen. There was no one else downstairs but the entrance door, usually kept shut, was ajar. Wendy said, "It's Harold. He shot me".

Charles, a 12 year old boy living next door, on hearing the explosion looked in the direction of Ken's house and, from about thirty feet away, saw Harold rush out of the entrance door downstairs and run away leaving the door open. Charles is Harold's nephew and has known Harold all his life.

Wendy was taken to the hospital. She arrived there at 7 p.m. At 7:40 p.m. she told her friend, Nurse Mills, "Harold did it. Harold shot me. It's a pity I won't be around when they hang him for doing this to me". Wendy died fifteen minutes later.

- i) Advise the prosecution on the admissibility of the foregoing items of evidence.
 - ii) What directions, if any, should be given to the jury in relation to Charles' evidence?
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QUESTION 3

Capone was charged with the murder of his employer and had been in the custody of the police for two days. His brother Jaeps went to the police station to seek bail for him. In spite of Jaeps' repeated requests, the police sergeant was adamant that Capone would not be granted bail. Eventually, Jaeps turned to his brother and said: "Cap, tell him the full story as to how it happened so he can let us go home. If you didn't do it there is no way he can keep you here one minute longer and he knows it". Much to Jaeps' surprise, Capone told him to go home and comfort their mother. Two hours later and just before the lights were to be put out, Capone confessed to the other occupant of the cell in which he was placed that he had strangled his employer.

Advise as to:

- a) the admissibility of Capone's confession;
 - b) the procedure to be followed at the trial on an objection being taken as to the admissibility of the confession; and
 - c) whether at any stage of the proceedings Capone can be cross-examined as to the truthfulness of what is contained in the confession.
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QUESTION 4

Max, Noah and Ron are being tried jointly. Max and Noah are charged with larceny of four gold chains from a jewellery store and Ron with receiving them. They each have several convictions for dishonesty and Ron, in addition, has one conviction for rape.

The witnesses for the prosecution are Karla, a sales clerk at the store, and Sergeant Pickton. Karla testified that while she was showing a customer some gold chains of an unusual design, Max and Noah rushed in, each grabbed two gold chains from the counter and ran away. The Sergeant testified that the day after the theft he searched Ron's home and found four gold chains which fit the description of the stolen chains.

Thereafter the following developments took place:

- (a) During the cross-examination of the Sergeant by Ron's counsel the following emerged:-
- Q. How many gold chains did you say you found in Ron's home?
- A. Four
- Q. Isn't it true that you found only one chain?
- A. No. I found four.
- Q. I suggest that you planted three chains in Ron's home. Isn't that so?
- A. No. That is not so. I found all four chains at his home.
- (b) Max did not give evidence but called one witness who testified as to Max's good character.
- (c) Noah, in his defence, testified that it was Max who took all four chains from the store.
- (d) In his defence, Ron testified that he bought one chain from Noah for \$500.00, that he did not know it was stolen and told the Sergeant so and that he never at any time had four chains in his possession.

At the appropriate stages of the proceedings what use, if any, can be made of these developments by:

- (i) counsel for the prosecution; and
- (ii) counsel for each accused in relation to each of the other accused.

QUESTION 5

- (a) You have been consulted by Messrs. Tagg & Company, Attorneys-at-Law, who have written to you stating:

"We are acting for Mrs. Dupont who has evidence that her husband has committed adultery and wishes to institute divorce proceedings. Please let us have your opinion as to the standard of proof required of our client in such proceedings".

Give Messrs. Tagg & Company your opinion.

(b) Bacchus is charged with selling intoxicating liquor without being the holder of a licence to do so contrary to the provisions of a local statute which read as follows:

"If any person sells any intoxicating liquor without holding a licence issued by a magistrate..... he shall be guilty of an offence".

Discuss fully the burden and standard of proof.

(c) At the trial of Penn for forgery, the judge in directing the jury on the standard of proof said:

"The requisite standard of proof in this as in all criminal cases is that the prosecution must prove the guilt of the accused beyond a reasonable doubt - not a flimsy or fanciful doubt. That is, the evidence should lead you to such a standard or state of mind as would cause you to act upon it in a matter of great consequence or great importance in your own private affairs".

Penn was convicted and has appealed on the ground of misdirection on the standard of proof. On the hearing of the appeal, counsel for the appellant submits that the trial judge gave the jury a wrong direction on the standard of proof and applied, quite incorrectly, a subjective rather than an objective test when explaining to them what was meant by reasonable doubt and thereby confused the jury.

How would you as counsel for the prosecution reply to this submission?

QUESTION 6

(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 the 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.

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

Bully had long wanted to get rid of his wife Aggie. In the first place he wrote her several letters threatening to murder her; secondly, he in fact attempted to murder her by preparing and offering her a cup of coffee in which he had placed what was by far a fatal dose of arsenic. Fortunately, instead of drinking the coffee, which had become cold, Aggie poured it on one of her potted plants which appeared to be dying. She was very distressed when she noticed that this had hastened the plant's death. Eventually Bully saw Aggie and her brother sitting in the living room watching the television. He picked up his shot gun and fired it at them, killing Aggie's brother instantly and injuring her.

Advise as to whether the Court can properly receive evidence from Bully's wife where he is charged with:-

- a) threats (in the case of the letters);
- b) attempted murder (in the case of the coffee with arsenic);
- c) attempted murder of her (the shooting incident); and
- d) the murder of her brother.

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