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COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1988

EVIDENCE AND FORENSIC MEDICINE  
(Tuesday, May 17, 1988)

Instructions to Students

- a) 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.
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QUESTION 1 (COMPULSORY)

(i) What is the difference between Laceration and an Incised wound?

(ii) In a murder trial, the defendant in his evidence, stated that during a struggle for the alleged handgun the weapon was accidentally discharged, hitting the deceased in the left chest. In cross-examination by the prosecution, the defendant stated that the weapon at the time it was discharged, was about 18 inches from the deceased. The doctor in his evidence stated that an entrance gunshot wound was noted on the left anterior chest of the deceased and this wound was surrounded by a circular patterned abrasion. Gunpowder residue was also noted in the subcutaneous tissues of the wound.

(a) In your opinion, what caused the circular patterned abrasion?

(b) What was the range of fire?

(c) Give a brief opinion as to whether the doctor's evidence correlates with the defendant's evidence.

(iii) With regard to the medical examination of a rape victim, name two (2) test samples usually taken for forensic laboratory investigation. State briefly what is the legal significance of these tests.

(iv) State three (3) causes of asphyxia.

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QUESTION 2

Danny is charged with the offence of unlawful possession of morphine under Section 3(1) of a statute on dangerous drugs.

Subsections (1) and (2) of Section 3 provide as follows:

"(1) Subject to subsection (2) of this Act, it shall not be lawful for a person to have in his possession any of the drugs or substances specified in the First Schedule of this Act, and it shall be an offence for any person to have any such drug or substance in his possession.

(2) Subsection (1) of this Act shall not apply to any of the drugs or substances specified in the Second Schedule of this Act."

The First Schedule of the statute contains a list of drugs and substances including morphine and among the substances specified in the Second Schedule is:

"any preparation of medicinal morphine containing not more than 0.2% morphine."

The prosecution propose calling two witnesses, a police officer to say that he found a white powder in Danny's bedroom and an analyst to say that the powder contains morphine.

Advise fully on the burden and standard of proof.

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QUESTION 3

Archie and Louise are husband and wife and Sonny, aged 10, is their only child. They all lived with Billy, Louise's uncle, in a house owned by Billy. Archie was charged on one indictment with two counts. Count 1 charged him with the murder of Billy and Count 2 charged him

with the attempted murder of Louise. At the trial, Louise was the only witness for the prosecution. She testified that one evening, six months ago at about 7:00 p.m., while she was having dinner with her uncle, her husband and her son, Archie accused her of infidelity and an argument ensued during which Billy told Archie to shut up or leave the house; that Archie then took a double barrelled shot-gun from a closet, shot and killed Billy and fired the other shot at her, wounding her on the left shoulder. The defence was accident. Archie called one witness, Sonny, to testify on his behalf. The trial judge after examining Sonny in the absence of the jury, ruled him incompetent to testify "as he neither believed in God nor understood the divine sanction involved in taking an oath." Archie was convicted on both counts. He wishes to appeal and seeks your advice.

Advise Archie.

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QUESTION 4

(a) Henry and Tammy go to the movies after which according to Tammy, Henry parks his car at a deserted spot and rapes her. Afterwards when Henry takes her home, Tammy sees her mother and father just about to go out and in answer to her mother's question says that she had been at a friend's house and that Henry picked her up on the road and gave her a ride home. However, when she goes into her room, she breaks down in tears when her elder sister asks her if she is all right, and complains of having been raped by Henry.

Advise on the admissibility and effect of evidence of this complaint at Henry's trial for raping Tammy where his defence is consent.

(b) What conditions must be satisfied before a witness giving evidence in court may be permitted to refresh his memory from a document?

(c) On the hearing of an application by a wife for maintenance under the Maintenance Act, the wife giving evidence stated that her husband was an accountant in Kingston in receipt of an annual salary of \$50,000. The husband's counsel objected to this evidence on the ground that "she does not know", whereupon the wife said that she "saw the information in a letter." The husband's counsel demanded that he be shown the letter, which the wife's counsel produced and handed to him. Having read the letter, he objected to it being put in evidence when the wife's counsel applied for its admission.

Advise the Magistrate as to the proper ruling.

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QUESTION 5

A well-known businessman, Jonathan, is charged with murder. After his arrest, he is taken to his local police station where he is placed in a cell and told to await the arrival of the Detective Superintendent in charge of the station. In the cell with him are three boisterous men, none of whom appears to have had a bath for several days. After about three hours in the cell, one of his cellmates, Birdie, asks Jonathan what he is "in for." Jonathan replies that his best friend went off with his (Jonathan's) wife and he had shot them both.

A couple hours later, the Superintendent arrives and sends for Jonathan for interrogation. Jonathan immediately says, "Super, this is a clear case, and I can't stand being in that filthy cell anymore. If I make a statement, can I go to the prison hospital or something?" The Superintendent replies "Well, maybe; we'll see; let's hear what you have

to say." Jonathan then makes a full confession along the same lines as his response to Birdie and is right away sent off to the infirmary at the large central lock-up in the area. There, he is placed in a very clean and neat room with one other person who sleeps most of the time.

At his trial, Jonathan challenges the confession on the ground that it is not voluntary. Advise:

- (a) on the procedure to be adopted by the trial judge on the objection being taken;
- (b) on the admissibility of the confession to the Superintendent;
- (c) on the admissibility of the confession to Birdie.

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QUESTION 6

(a) Speedy was charged with operating a commercial passenger vehicle for reward on a public highway without a licence. It is alleged that he picked up passengers on April 5, 1988 at the entrance to the University and carried them to various points on the route to Half-Way-Tree. The prosecution's chief witness is a plain clothes detective who was actually on the vehicle on April 5 and whose evidence is that as each passenger is about to alight from the vehicle at his destination, Speedy calls out "Remember the present for the poor in the box provided." At the exit door, there is a box wrapped in gift paper marked "one dollar", into which alighting passengers invariably drop money just before leaving the vehicle, whereupon the detective says, Speedy calls out to each "God bless your generosity." Speedy's defence is that he was not in fact carrying passengers for reward on the

day in question and that he was merely assisting fellow citizens in distress by giving them a ride. As for the collection, he says he was making it for his church which had a special appeal for the poor on that day.

The prosecution proposes to call witnesses to establish that on March 25, 27, 31 and April 2, 1988 they had travelled in Speedy's vehicle and had paid a dollar in similar circumstances.

Advise on the admissibility of this evidence.

(b) Assume that one of the witnesses to be called by the prosecution in (a) above is alleged by the detective to be the person who empties Speedy's money box at the termination of the journey on April 5, 1988.

How should the Magistrate view the evidence?

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QUESTION 7

Vance and Will are being jointly tried for larceny of concrete blocks from a building site near to Vance's home. Will has several previous convictions for dishonesty and Vance has two previous convictions, one for larceny and another for rape. Vance testifies that he saw Will putting some of the blocks on a truck and went to enquire who gave him permission to do so when the police arrested them both. Will makes an unsworn statement from the dock denying the charge and asserting that he is a man of substance and of good character and would not steal.

Advise whether:

- (a) Vance may be cross-examined on his previous convictions;
  - (b) evidence may be adduced to prove Will's bad character.
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QUESTION 8

(a) Margaret is charged with tampering with the works of the telephone company by having a telephone line connected illegally at her apartment and making telephone calls illegally. In order to establish that a particular number which was not assigned by the company to Margaret was connected at her apartment, the prosecution proposes to call a technician who will say that when he visited her home he called the central exchange and asked the operator there to call him back on the number 51291. He will further say that, having hung up, the telephone at Margaret's home rang and when he answered it, he heard the voice of the operator whom he had spoken to before who told him that he had dialled 51291. It is proposed that the technician should give this evidence though it is not proposed to call the operator.

Advise on the admissibility of the technician's evidence.

(b) At Dave's trial for the murder of John, the prosecution proposes to call John's widow, Jill, who will say that immediately after John was shot while opening the gate to his home, she heard him shout out "Jesus, Jilly, ah dead now; that damn boy Dave Thomas catch me at last!" This is the only evidence implicating Dave, whose surname is Thomas.

Advise on the admissibility of Jill's evidence.

Would it make a difference to your answer if John's last words had been "if ah dead, tell everybody is Dave Thomas who do it"?

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