

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1990

EVIDENCE AND FORENSIC MEDICINE
(Tuesday, May 22, 1990)

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.
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QUESTION 1 (COMPULSORY)

1990

- (a) State briefly the forensic importance of rigor mortis?
- (b) What, if any, is the difference between a contusion and a bruise?
- (c) In a case of murder with suspicion of rape, name four samples usually taken from the victim for forensic lab investigation;
- (d) During a murder trial, the defendant stated in his evidence that he was about 6 feet from the victim when he accidentally slipped, and his revolver went off hitting the deceased in the chest. The pathologist in his evidence stated that an entrance gunshot wound was seen on the right anterior chest of the deceased, and this wound is surrounded by an area of tattooing measuring up to 3" wide.
 - (i) What was the possible range of fire?
 - (ii) Did the pathologist's evidence corroborate the evidence of the defendant?

QUESTION 2

(a) Jimmy was charged with raping Georgia. His defence was that he had acted under the compulsion of fear of death, the evidence given by him being to the effect that while he was giving Georgia a lift to her home in his car, they were set upon by gunmen who forced him to commit the offence. At his trial, he was convicted and sentenced to 7 years imprisonment. On Jimmy's appeal against the conviction and sentence, it was submitted by his counsel that the burden of disproving that he had had intercourse with Georgia under duress was on the prosecution and that the jury should have been directed that the prosecution must lead evidence as would satisfy them beyond reasonable doubt that he did not act under duress.

As counsel for the prosecution, how would you meet these submissions? Would your answer differ if Jimmy's defence was one of insanity?

(b) An insurance policy excluded liability for loss by theft or dishonesty by any servant in the exclusive employment of the insured company. A loss

occurred and the insurance company contended that it fell within the above exclusion and was therefore not covered, while the insured company contended to the contrary. The insured company now brings an action on the policy against the insurance company and you are asked to advise on the standard of proof.

QUESTION 3

- (a) Distinguish between privilege and competence and compellability,
- (b) You are acting for Neville, the plaintiff in an action for libel brought against Oswald. Your client has informed you that Oswald has in his possession, and proposes using at the trial, copies of letters passing between you and your client before the action was brought. These letters were copied by your clerk, without your knowledge or consent, and handed to Oswald. These letters contain confidential information on advice sought by your client and obtained from you in connection with the action and your client does not wish to have this information disclosed in court.

Advise Neville and state what course of action, if any, you would pursue in the circumstances.

QUESTION 4

- (a) Maurice was arrested and charged with housebreaking and larceny of jewellery. After being in custody for three hours Sergeant Bush told Maurice, "Don't you think it would be better for you to come clean and tell me exactly what happened?". Maurice replied "If I tell you the truth will I get bail and a lighter sentence?". But before the Sergeant could say anything Maurice continued "Alright I will tell you how it happened. I did the job and my sister, Dora, drove the getaway car. But I don't want her involved in this". At the trial, as the voluntariness of Maurice's statement was challenged, the judge held a trial on the voir dire to determine its admissibility.

What principles should the trial judge bear in mind in determining the admissibility of Maurice's statement?

(b) George and Errol are being jointly tried, George for larceny of an electronic typewriter, and Errol for receiving it. George made a written statement to the police stating that both he and Errol stole the typewriter. After a trial on the voir dire, the judge rules this statement inadmissible as it was not made voluntarily. At the main trial George testified that he did not steal the typewriter but that on the same day he was arrested Errol had offered to sell it to him for \$50.

Advise whether counsel for Errol and counsel for the prosecution can cross-examine George on the contents of his written statement and, if so, for what purpose.

QUESTION 5

(a) Doolan and Tallis are inmates of the local psychiatric hospital. They are long term patients who are regarded by the authorities as quite trustworthy and are therefore given supervisory responsibilities from time to time. Donatello is a senior warder who is renowned for his cruelty - indeed inmates like Doolan and Tallis often joke that he is the maddest man in the institution. Clancy is another inmate, simple minded in the extreme, gentle and generally unobtrusive. One day, Donatello summons Clancy and orders him to clean his (the warder's) boots. This is quite an unusual request and Clancy enquires very gently, why. Doolan and Tallis are standing nearby and Tallis it is who calls out "Like you head tekking you fi true now Donatello!". Clancy, tickled pink by this remark, begins to giggle and is soon in an uncontrollable fit of laughter, whereupon Donatello starts to curse loudly, punches Clancy to the ground and, when he will not stop laughing, kicks him savagely in the head several times. He then turns to Doolan and Tallis, who are still watching, but when they see him coming toward them they run away shouting "Mad Donatello kill off poor little Clancy - what a hell!". Clancy has in fact sustained severe head injuries, from which he dies in hospital a few days later without regaining consciousness.

Donnatello is charged with murder and the prosecution's main witnesses are Doolan and Tallis. In his defence, he denies the attack on Clancy and alleges that Clancy in fact attacked him and while he was defending himself from this attack, Clancy fell to the ground hitting his head.

He is convicted and you are asked as counsel to advise whether the judge ought to have given the jury a warning on the question of corroboration. You are also asked to advise on the further question of whether a witness who requires corroboration can be corroborated by another witness who also requires corroboration.

(b) In an appeal from a conviction based entirely upon the acceptance of evidence of the identification of the appellant, counsel for the appellant submits that "the authorities have now clearly attained to the position that evidence of identity in criminal cases requires corroboration". Comment.

QUESTION 6

Paul, Scott and Samuelson are charged with robbery with aggravation. The allegations are that all three were travelling together in a Suzuki Fronte motor car, with Paul driving. As they got to an intersection controlled by traffic lights, Scott, who is sitting in the front passenger's seat, jumped out, pointed a revolver into the face of a lady in a BMW motor car in the adjacent lane of traffic and demanded her handbag - which she handed over. Scott then jumped into the Suzuki, shouted, "drive!" and Paul sped away. A police vehicle while approaching the intersection from behind the other two cars, gave chase and the Suzuki got out of control, crashed into a wall and the three occupants were apprehended.

At their trial, Scott's counsel cross examines the lady in the BMW minutely with a view to establishing that she had a few days previously purchased a quantity of cocaine from him, but had failed to pay him for it. In taking her bag, it is therefore implied, Scott is only claiming what is rightfully his and in fact he makes a succinct unsworn statement to this effect. Samuelson who was in the back seat of the car, gives sworn evidence that he knows nothing about the matter and that he was only hitching a ride. According to him, though, he did hear Scott say to Paul as they got to the intersection "See a rich woman deh,

man, mek we hold her up". Paul the alleged driver of the Suzuki, is not represented by counsel and does not participate in the trial in any way declaring only that "Jah will guide I and I out of Babylon clutches". All three accused have several convictions for offences involving dishonesty. In addition, Samuelson has one conviction for possession for ganja.

Advise as follows:

- (i) What use can the prosecution make of Paul's, Scott's and Samuelson's previous convictions?
- (ii) Would it make a difference if either Paul or Scott went into the witness box and gave sworn evidence?
- (iii) What is the effect of Samuelson's evidence?

QUESTION 7

(a) Mackie was charged with the murder of a child aged 7 to whom he stood in loco parentis. The prosecution's case was that the child had fallen down a flight of stairs and had been killed while running away from Mackie, who was in fact chasing him with a leather belt. Mackie's defence is that the child and himself were playing when the child fell down the stairs accidentally. The prosecution proposes to call as a witness Mackie's neighbour to give evidence of at least four previous occasions when she heard the child screaming upstairs and she saw Mackie chasing him, belt in hand, into the yard. Indeed, on two of those occasions, she says, the child ran into her house for refuge. She also says that on many occasions Mackie has told her that the child is very rude and requires "heavy manners".

Advise on the admissibility of the neighbour's evidence at Mackie's trial.

(b) "Leopards may not change their spots, but there are acknowledged to be dangers in giving a dog a bad name. Many human beings are in many ways creatures of habit, but if unduly heavy reliance is placed upon this generalisation by a trier of fact when determining whether a particular human being did in fact behave in a particular way on a particular occasion, serious injustice is liable to result. It is this consideration that constitutes the principal reason for

the severe restrictions which the law places upon the reception of evidence of disposition". Carter - Cases and Statutes on Evidence (1981) p. 533.

Comment. Has the law gone too far in this regard?

QUESTION 8

Winston and Marion were married in 1978 and there is one child of the marriage, a ten year old girl named Anne-Marie. Marion attended church every Sunday at services conducted by Reverend Pascal. Dr. Charles was the family doctor. Four weeks ago, Winston accused Marion of having an affair with Richard who was Marion's boy friend before the marriage. As a result, a bitter quarrel ensued between the couple, in the presence of Anne-Marie, and on the following day Marion left the matrimonial home and went to live with Richard. She did not take Anne-Marie with her.

Five days later at about 6 p.m., Winston said to his sister Cheryl, in the presence and hearing of Anne-Marie, "I'm going to Richard's house today and I'm going to kill that nasty wife of mine".

On that same day at about 6:30 p.m. Richard was at home in his bedroom while Marion was in the kitchen. He heard Marion cry out, "Oh God, don't cut me with that knife". He rushed to the kitchen where he saw Marion lying on the floor bleeding profusely from her abdomen. There was no one else in the kitchen. Marion said "Richard, I'm going to die. It's Winston who stabbed me in my belly and I'm not going to live. Please send for Reverend Pascal and Dr. Charles".

At about 6:36 p.m., Richard's neighbour, Basil, heard an unidentified woman say "Hello Winston, what's the hurry?".

Marion was taken to the nearby hospital where at 10:25 p.m. she told Dr. Charles, "Doctor, I know I'm going to die but ... but let me tell you who ... who stabbed me. It's... it's... yes it's my husband..." but she died before completing what she was saying.

Winston is now charged with the murder of Marion. Cheryl has emigrated to Canada and is unavailable to give evidence. The prosecution proposes calling Anne-Marie, Richard, Dr. Charles and Basil to testify.

Advise the prosecution on the proposed evidence and the duty of the trial judge in relation thereto.
