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NORMAN MANLEY LAW SCHOOL

Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SUPPLEMENTARY EXAMINATIONS, 1976

EVIDENCE AND FORENSIC MEDICINE

Thursday, September 2, 1976

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) It is unnecessary to transcribe the questions you attempt.

QUESTION 1 (Compulsory)

EITHER

- (a) A family of five children after having their lunch developed fits, vomiting, unconsciousness and died in about an hour's time.
 - (i) Do you suspect a disease or food-poisoning?
 - (ii) If suspected food-poisoning, the pathologist is asked to perform a post-mortem examination. What articles and viscera do you expect to be collected by the pathologist for chemical analysis and what precautions is the doctor expected to take in sending them to the chemical analyst?

OR

- (b) Describe the classical post-mortem findings in a case of suicidal fresh-water drowning (body not decomposed).

QUESTION 2.

(1) Hyacinth became ill with a mouth infection after three visits she made to her dentist to have some fillings done. She recalls that on all the visits she made to the dentist he at no time

sterilized any of the equipment he used in her mouth. Indeed, he would take an instrument straight from his pocket, use it in her mouth and put it back in his pocket. He repeated this procedure several times on each of her visits.

On discussing the matter with her girlfriends Lily and Ann, Hyacinth discovered that they too had very similar experiences with this same dentist some weeks before. In their case the infection caused them to become very ill and it cost them a lot of money for medical expenses.

Hyacinth has sued her dentist in negligence but she now wonders whether she should pursue the action as she feels that on her evidence alone it would not be easy for her to make out a case against the dentist. She wished that there was some way that she could be allowed to bring out in evidence in her case the experiences of her friends.

Advise Hyacinth.

(2) Alty is charged with the murder of his lodger, Alice, by arsenical poisoning. At the trial the prosecution led evidence to show that Betty and Carole, two other lodgers of Alty's, also came to their death by arsenical poisoning some months before Alice's death. The evidence also showed that each of the ladies was charged the sum of \$10 per week by Alty for boarding and, in addition, he would buy each of them gifts from time to time.

On his conviction Alty is very irate as he feels that all this evidence about the other girls was damaging and should not have been admitted.

Should the prosecution have been allowed to adduce at the trial about the other girls?

QUESTION 3.

- (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 twentyfive minutes after the conflagration began, he heard a woman in the crowd of spectators exclaim to a passing motorist who bore some resemblance to the accused, "How come man, you place burning and you going away from the fire?"
- (b) J is charged with falsely representing that the flour he imported was milled in Canada. At J's trial the prosecution was allowed to adduce in evidence the bags of flour with the inscription thereon "Produce of Insula".

(c) Alfie is charged with the murder of his wife. A witness testified that she heard screaming inside the couple's room and on listening more intently she heard distinctly when the wife said "Alfie if you stab me one more time I am going to die." Soon after the wife came running out of the house bleeding profusely. She died within seconds. The autopsy indicated that death was caused by severe haemorrhage due to multiple stab wounds - there were twelve in all.

Discuss the admissibility of the evidence in (a), (b) and (c) above.

QUESTION 4.

(1) Sunny-Jim was charged on indictment for indecent assault on Constance, a teenager. On Sunny-Jim's conviction his Attorney seeks your help to determine whether an appeal should be brought in the light of the following summing-up by the judge -

"Members of the jury as I indicated to you before you must not convict solely on the evidence of a child, such as the prosecutrix. The law requires that there should be some corroboration of her evidence. On the day in question, after the events alleged by the prosecution, the prosecutrix made a complaint to her mother that Sunny-Jim indecently assaulted her. A policeman then went with Constance's mother to Sunny-Jim's house. The policeman said to him: 'Constance said that you interfered with her.' Sunny-Jim replied: 'I know the law, you'll have a hard time proving that'.

"If you think that the failure on the prisoner's part to make a denial when he heard the allegation made against him and again when the charges were formally laid corroborates the evidence of the prosecutrix, then you will probably more readily accept her evidence as being corroborated to that extent."

Advise Sunny-Jim's Attorney.

(2) July, an unmarried mother, instituted affiliation proceedings against Sleepy. At the hearing July's mother wishes to give evidence that when she mentioned to him July's predicament, Sleepy said nothing - "he simply began to pace up and down the room". Sleepy in turn wishes to establish the fact that immediately after the hint was made that he was the father of July's child he

called his doctor and requested that arrangements be made to have blood samples taken from him and from the child to show that he was not the father.

Discuss the admissibility of the various items of evidence indicated above.

QUESTION 5.

(1) Genius has got you to part with a large sum of money by selling you a ring which he falsely represented to be made of gold. He is prosecuted for obtaining money by means of false pretences. However, he was acquitted of the charge. In the light of the prosecution's failure to gain a conviction, do you consider that you could succeed in obtaining a judgement against Genius if you were to sue him for your money for breach of contract?

(2) "Unhappy" wants to get a divorce as he considers that his wife has been both cruel and unfaithful to him. He understands that in some cases the "burden" or "standard" for making out a case is heavier than in others. He would like you to clarify the position in regard to the two grounds of divorce which he sees open to him as he feels that he has to choose carefully, because he knows that the evidence he is going to rely on is not very strong in either case.

What help can you give "Unhappy"?

(3) At the trial of George for the murder of Robin, the prosecution adduced evidence that George plunged a knife into Robin and thereby caused his death.

George's counsel whilst cross-examining the Crown's eye-witness to the killing suggested that George was acting in self-defence when he stabbed Robin. The witness denied this.

What is the nature of the burden of proof which rests on the Crown in this case?

Would the Defence have to discharge any burden of proof? If so, what is the nature of it and how would they go about discharging it?

QUESTION 6.

On their way from Sunday School Jack and Jill aged 8 and 9 are attracted by a loud scream. On investigation they see Jo Jo running away from some bushes. They also meet Suzie who refuses to speak to them but instead runs to her home nearby. Suzie tells

her sister, Margaret, that she was raped by an unknown man. Margaret reports the matter to her mother who calls in the police.

Advise the prosecution on the evidence to be led against Jo Jo, who is charged for unlawful carnal knowledge so as to ensure proper presentation of the case.

QUESTION 7.

On a charge of maliciously setting fire to canes belonging to Y Sugar Company, the prosecution called W, a witness who deposed that he saw N who has a small cane plantation next to Y's plantation running away from the spot where the fire started. W then heard S say "Fire start, and you running away from your own plantation?"

Advise on what evidence should be led and how the judge should deal with the statement made by S against N on trial.

QUESTION 8.

(1) Terry and his girlfriend Jean were suspected of warehouse breaking and larceny. Later only Terry was charged with these offences. At the trial the main evidence against Terry was an alleged confession.

During the interviews with the police Jean had said "I'll never be able to hold me head up again if they send you down." A police officer then said "Look Terry neither you nor I would like that. Be sensible." One hour later Terry made a statement confessing to the crimes charged.

The issue of the admissibility of the confession was tried on the voir dire and the judge admitted it. At the end of the trial the judge summed up thus on the matter of the confession -

"Members of the jury, it is not for me to say whether this confession is true or not. You are the arbiters of all issues of fact. If at the end of the day you are not satisfied beyond a reasonable doubt that it is voluntary you must reject it entirely."

The defence appeals on the ground that (a) the trial judge should not have admitted the confession, (b) the judge misdirected the jury in the passage cited above.

Advise Terry's Attorney as to the chances of a successful appeal on these two grounds.

(2) Whilst in custody on a charge of murder "Concerned" asked the gaoler what were the chances of capital punishment being abolished before his trial. The gaoler remarked that they were "quite good". One hour later "Concerned" called the gaoler and said he wanted to make a confession.

Would this confession be admissible?

Would it have made any difference if what the gaoler had in fact said was this -

"Why worry about that, why not just do what your conscience tells you to?"
