

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SUPPLEMENTARY EXAMINATIONS, 1975

EVIDENCE AND FORENSIC MEDICINE

Instructions to Students

- (a) Time: 3½ hours.
- (b) Answer FIVE questions, one from Part I, one from Part II and three from Part III.
- (c) It is unnecessary to transcribe the questions you attempt.
- (d) Answer Question 1 on the separate answer sheets provided.

PART I

QUESTION 1.

EITHER

A doctor, after visiting the scene of death and performing a post-mortem examination on a dead body, has opined that:

- (a) death was due to carbon monoxide poisoning.
- (b) time of death: 36 - 48 hours.

Explain how he has come to this conclusion.

OR

Classify wounds. Discuss stab wounds in general.

PART II

Answer one question from this Part.

QUESTION 2.

(1) A is charged with having carnal knowledge of a girl of fourteen. The Crown has led evidence that while assisting the police with their enquiries A told the police officer that he knew nothing about the alleged offence. When cautioned, the accused merely said that he had nothing to say. At the committal proceedings when formally charged the accused merely said, "Not guilty, sir. I will get justice higher up."

At the trial you appear for the prosecution. The accused goes into the witness box and gives evidence that on the date of the alleged offence he was several miles away from Kingston. The accused has brought a witness to support his story.

- (a) What use, if any, can you make of the accused's silence when charged and at the committal proceedings?
- (b) Would it make any difference to your answer if the accused remained silent in the face of accusations by the girl's mother that he had interfered with her daughter.
- (c) In the light of the defence's alibi what submissions would you make with regard to its value?

(2) B is charged jointly with C in connection with a bank robbery. The police were tipped off and B and C were apprehended as they made their escape. B alleges at the trial that he was with C only because C had told him that he wanted to draw a lot of money and wanted someone to protect him just in case. Crown Counsel cross-examined the accused thus:

- Q. Do you know C well?
- A. Yes, sir.
- Q. Would you say that he is a man of ample means?
- A. No, sir.
- Q. I mean, did he spend freely or live lavishly?
- A. No, sir.
- Q. Did you consider him a miser?
- A. No, sir. He hardly ever had money.
- Q. Now, did you think it a likely story that he was going to draw so much money that he was afraid?
- A. Not likely, but I didn't think.

/Q....

Q. So it has only just struck you as strange.

A. Yes, sir.

Counsel for the defence wishes to counter this cross-examination by calling a witness to say that shortly after his apprehension B shouted to the witness who was then looking on as a bystander: "They're going to pin it on me. C fooled me. He asked me to come and draw some money."

Advise whether the bystander's evidence is admissible.

QUESTION 3.

(1) Tim was injured at the premises of Z Ltd. where he worked. The defence have called Bill who previously stated orally that he was present at the time Tim sustained his injuries and that Tim said: "It's my fault." The following exchanges took place during examination of Bill:

Q. Were you employed with Z Ltd. on the day of the accident?

A. Yes, sir.

Q. What happened on that day?

A. Nothing unusual. I don't remember anything.

Q. You are now changing your tune. Why?

Describe three ways in which you could handle the situation envisaged above.

(2) John is being tried for larceny of several gallons of paint from a warehouse. John has called a witness who has told the court that John had always been highly regarded by his friends.

(a) You appear for the Crown. In cross-examining John, what use, if any, would you make of the fact that John's record shows a conviction ten years ago for driving a motor-car whilst disqualified.

(b) Could you make any use of the fact that for many years the police suspected John of being a drug peddler? Assuming you were allowed to put this evidence to John, what would be the main danger from the point of view of your own case against John?

PART III

Answer any three questions in this Part.

QUESTION 4.

E, F and G are charged jointly with assault occasioning bodily harm and possession of an offensive weapon. At the close of the case for the prosecution the judge found that there was no case against E and directed the jury to find her Not Guilty. E was discharged.

F, who had been hoping that E would give evidence in support of his case, now desired to compel E to give evidence on his behalf by obtaining a witness order. The judge ruled that E was not a compellable witness for F.

Later on in the trial F, in the course of his evidence, alleged that H, a prosecution witness, had not only a bad general reputation for veracity but that H had decided to give evidence against him because he had rejected homosexual advances made to him by H. Counsel for G, who was aware of F's bad criminal record unsuccessfully sought leave to cross-examine F as to his bad record pursuant to section 9 (f) (ii) of the Evidence Act (J.).

Advise F and G.

QUESTION 5.

(1) Jane is an unmarried mother. She instituted affiliation proceedings against Don Juan on the ground that he was the father of her child. Jane claims that she met Don Juan on a week-end holiday at a country cottage. Don Juan admits that there was an opportunity for intercourse but denies that any intercourse took place.

Assuming there is other evidence that the two persons were together most of the week-end, is there enough evidence to justify an affiliation order?

(2) R and S were convicted of obtaining money by false pretences on March 21 from two American tourists whom they offered cheap tours of Kingston. After obtaining the money they drove the tourists to Jacks Hill and abandoned them.

/T gave ...

T gave evidence for the Crown that on February 21 he and R met two foreign tourists who paid them a large sum of money for a tour of Kingston night spots and that they deserted them in Jacks Hill.

V gave evidence on January 21 that he participated in a similar incident with R.

R and S are considering an appeal on the ground that the evidence of T and V was wrongly admitted. Advise R and S on their chances of success on appeal.

QUESTION 6.

(1) The deceased, Tom, was an old man with a small fortune. He had relatives, but chose to spend all his time with Julie, an attractive but mature woman. During his last days he was completely taken up with Julie and saw little of his relatives.

Two weeks before he died of a lingering ailment he and Julie went to Tom's attorney-at-law, Charles, and gave him instructions to draw up a will leaving nearly all his property to Julie.

Tom's relatives now wish to challenge the will on the ground of undue influence on the part of Julie. The defence wishes to put in evidence the notes of the interview between Tom, Julie and Charles, which Charles had very carefully made. Charles, however has since died.

The notes support the defence case that there was no undue influence on Julie's part.

The plaintiffs object that this evidence is inadmissible hearsay. Consider what ruling the judge should give.

(2) Is it necessary to prove an Act of Parliament on which you rely as establishing a specific fact? State your reason.

(3) How could you prove the existence of a legally declared state of emergency?

QUESTION 7.

Jim was convicted of shoplifting a tin of Milo from a supermarket. Shortly after paying for his purchases and leaving the cash desk, he was pursued by a store detective and two boys, aged 10 and 11. The boys pointed at him and said, "That is the man who stole the Milo. Jim replied, "I did not!" Jim's bag was searched and the tin of Milo found. The purchase had not been registered on Jim's bill and he admitted that he might have made a mistake.

At the trial several months later the store detective positively identified Jim, though one of the boys, both of whom gave unsworn evidence, could not remember his face.

Jim, who so far had led an exemplary life, called as a witness a former cashier at that supermarket to say that on previous occasions when Jim forgot to pay for an article he came back and paid for it. The prosecution did not cross-examine this witness.

In his summing-up the judge said: "The burden of proof here lies upon the prosecution and it remains upon the prosecution from the very start to the very end of the case. The standard of proof is a high one. It must be proved beyond reasonable doubt, and that means simply a doubt based upon good reason and not a fanciful doubt. It is the sort of doubt which might affect you in the conduct of your everyday affairs. That is the standard of proof which is required."

Consider the facts outlined above and the summing-up, and advise Jim whether an appeal should be brought.

QUESTION 8.

(1) For many years H and W have lived in stable concubinage. H is now charged indictably with carnal abuse on a girl of 12. The prosecution wishes to call W to give evidence that shortly after the incident she saw the girl in a distressed condition. W has indicated that she will not give evidence for the prosecution against H.

The girl's mother has no documentary proof of her age and may not have registered the birth. However, she remembers that the child was delivered by the district midwife.

Advise the prosecution.

/ (2) ...

(2) W, the wife, in the course of divorce proceedings, moved the court for an interlocutory order to compel H, the husband, to produce on discovery his last will and testament on the ground that it would support the wife's case that the husband committed adultery.

Advise H, who is also anxious to know how much the will would weigh against him, if produced.
