

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1985

EVIDENCE AND FORENSIC MEDICINE
(Wednesday, May 22, 1985)

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1985
yrs. 1 & 2

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)

EITHER

- (i) (a) What are the various kinds of mechanical injuries?
- (b) Describe in detail the post-mortem appearance in a case of death due to firearm injuries.

OR

- (ii) Write short notes on:
 - (a) Drug abuse;
 - (b) Circumstantial evidence;
 - (c) Post-mortem lividity;
 - (d) Drowning;
 - (e) Head injuries.

QUESTION 2

(i) What foundation must be laid before a witness will be allowed to refresh his memory from a document in the course of giving evidence in the witness box? Outline briefly the questions you would ask in order to satisfy the requirements.

(ii) During the course of his evidence in a civil trial for damages for negligence, Professor Gold, a consultant orthopaedic surgeon and the plaintiff's doctor, is given permission to refresh his memory from his notes. Having looked at them and asked certain questions about various marks and symbols, etc. on the notes, Mr. Brown, counsel for the defendant, hands them back to the Professor and is about to continue his cross-examination, when the following exchange takes place:

His Lordship: Just a minute, Mr. Brown, I'm not sure that the matter ends there. Mr. Smith (addressing counsel for the plaintiff) is there anything you wish to say to me?

Mr. Smith: Yes, milud, indeed...ah...ah...I think that my learned friend now has...ah...a bit of a problem...I mean...ah...it seems to me that he can't just call for the notes and look at them and ask all those questions and then leave it at that...I would think that there would have to be...ah...something more...

His Lordship: (impatiently) Yes, yes, Mr. Smith, but you have to decide; do you want to ask him to do anything?

Mr. Smith: Ah...I see that milud...but...ah...with respect...it would seem to me to follow...

His Lordship: (with some heat) Look, Mr. Smith, don't waste my time. Mr. Brown, do you wish to say anything?

What is the judge getting at and how should Mr. Brown reply?

(iii) You appear for the plaintiff in an action against a police officer and the Attorney-General claiming damages for malicious prosecution, false imprisonment and assault. The action arises out of the arrest, imprisonment and alleged maltreatment of the plaintiff on the night of May 30, 1984 and his subsequent prosecution for obstructing a police officer in the course of his duty and disorderly conduct. The plaintiff has been acquitted of these charges, hence the present action. The following emerges during his cross-examination by counsel for the Attorney-General:

Q: On the night when you were arrested and taken to the station, you saw the officer-in-charge there, did you not?

A: Yes.

Q: That would be Inspector Smith?

A: Yes.

Q: Indeed, it was he who prepared the papers when your brother came to bail you later that evening, was it not?

A: Yes, sir.

Q: Did you complain to him then about what you now claim is your illegal detention and the fact that the police officer had assaulted you?

A: No.

Q: Didn't think of doing so, eh?

A: No, sir, but...

Q: No matter. Now, when you went to see your attorney the following day, you consulted him about the criminal charges, is that not so?

A: Yes.

Q: And you didn't tell him anything about assault or illegal detention the night before?

A: No, sir, but - if I could explain...

Q: That's quite alright, I think I understand very well; now tell me this, were you an imaginative boy at school?

You object successfully to this last question on the ground of irrelevance and the cross-examination ends. You have in your brief a statement from Lloyd, the plaintiff's brother, which says that on the very night of his arrest the plaintiff complained to Lloyd about the "illegal and vicious manner" in which he had been treated at the station.

Can you now make any use of this statement and, if so, how and when?

QUESTION 3

(i) Distinguish and describe, with examples, the legal burden of proof and the duty of adducing evidence; explain the relationship between them.

(ii) Section 16(1) of the Dangerous Drugs Act provides as follows:

(1) Every person who -

(a) removes any dangerous drug from the conveyance by which it is brought into the Island in transit; or

(b) in any way moves any such drug in the Island at any time after removal from such conveyance,

except under and in accordance with a licence in the Form D set out in the Schedule issued by the Collector-General, shall be guilty of an offence against this Act.

Dave, a port-worker, is charged with removing a quantity of morphine from a cargo ship in the harbour without the appropriate licence contrary to Section 16(1) of the Act. At his trial before a Resident Magistrate, prosecuting counsel calls evidence to establish the removal of the morphine and then is about to call an officer of the Collector-General's department to establish that no licence had been issued to Dave. However, counsel is stopped by the Magistrate who observes that such proof is, in his view, unnecessary.

Advise as to the correctness of the Magistrate's observations.

QUESTION 4

(i) During the course of a trial on indictment, the accused objects to the admission in evidence of a confessional statement attributed to him. A voir dire is held and, after the circumstances in which the statement was made have been fully explored, the judge admits the statement as voluntary. Later, on the resumed trial when the police officers who took the statement are again cross-examined by defence counsel, some damaging admissions emerge from them which cast some doubt on the voluntariness of the statement. Defence counsel now asks the judge to reconsider his earlier ruling.

Can the judge do this? Of what significance to whatever ruling he might make is the fact that the jury has by now heard the terms of the confession?

(ii) While being questioned by the police in connection with various offences of house-breaking and larceny in the Liguanea area, Shifty asks the Sergeant and the Corporal who are interviewing him if he will get bail if he makes a statement. They answer affirmatively and Shifty asks to be left alone for a bit while he thinks it over. Two hours later, the Inspector in charge of the investigation comes into the room where Shifty is and asks him if he is ready to talk. "Yes", says Shifty; "does the promise of bail the officers made still stand?" he asks. "I don't know anything about that", replies the Inspector; "that's not my policy - all I want to know is if you are going to talk." The Inspector then leaves the room and sends in Shifty's wife, who has come to visit him.

After Shifty tells her what has been going on, she urges him to make a statement, saying, "I'm sure they'll give you bail if you do and in any case I know that they're more lenient when people co-operate with them." Encouraged by his wife's words, Shifty calls the Inspector and makes a full confession.

Advise on the admissibility of the confession when it is challenged as being involuntary at Shifty's trial for house-breaking and larceny.

QUESTION 5

(i) During the course of A's trial for murder allegedly committed during an armed robbery, B, the chief eyewitness for the prosecution is vigorously cross-examined by A's counsel with a view to establishing that his (B's) identification of A as one of the robbers was motivated by spite and ill-will towards A and that B had not in fact witnessed the incident at all. At a point in the cross-examination it is in fact put to B that he is "a notorious perjurer".

The prosecution has in its possession information that A has in fact been convicted of four previous offences involving violence and one for dangerous driving.

Advise what use may be made by the prosecution of this information in each of the following circumstances:

- (a) where, at the close of the prosecution's case, A gives an unsworn statement from the dock in which he repeats his counsel's attack on B and asserts in detail his own good character;

- (b) where, at the close of the prosecution's case, he gives sworn evidence in which he does not repeat counsel's attack on B, nor does he assert his own good character;
- (c) where, at the close of the prosecution's case, an unsuccessful no-case submission having been made, he elects to remain silent and to rest on his submission, calling no witnesses.

(ii) Discuss the nature of the judicial discretion to prohibit cross-examination of an accused person as to his character in spite of the fact that it is permitted as a matter of law by the regional equivalents of Section 1(f)(ii) and (iii) of the Criminal Evidence Act, 1898 (U.K.).

QUESTION 6

Speedy is charged with three counts of indecent assault involving three schoolboys of about ten years of age each. The offences are alleged to have been committed on the 5th, the 16th and the 21st April, 1985 respectively and on each occasion Speedy is alleged to have gone to the boys' school, accosted one of them in the schoolyard and represented to him - falsely - that the boy's parents had sent Speedy to take him home. On each occasion, Speedy is alleged to have encouraged each boy to accompany him to the Public Gardens before going home and the offences are all said to have been committed there. By way of defence to each charge, Speedy pleads mistaken identity and sets up an alibi.

Advise:

- (a) on the proper ruling where, at his trial, Speedy's counsel moves to sever the indictment on the ground that the evidence of each boy is inadmissible on the charges in respect of the others;
 - (b) on the issue of corroboration generally, where two of the boys give unsworn evidence and one, who appears to be more mature than the others, is allowed to give sworn evidence; and
 - (c) in the light of the defence raised, whether any special onus rests on the trial judge with regard to the question of identification.
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QUESTION 7

(i) The accused, Doolan, was charged with robbery. The victim testified that he had been attacked by two men including Doolan, that Doolan had taken his wallet and both men had turned and run off down the road. The other man, subsequently identified as Tallis, apparently tripped and fell and was held some thirty yards away by a policeman on foot patrol who had witnessed the incident. In the meantime, Doolan had made good his escape, but the victim immediately identified Tallis as one of the two men who had robbed him. At the station Tallis, who subsequently pleaded guilty, gave a full written statement implicating Doolan as the prime mover in the robbery and, as a result of Tallis's cooperation, Doolan was arrested the following day and taken to the station where Tallis was being held in custody. There Doolan and Tallis were taken into the same room where the policeman in charge of the investigation handed Doolan a copy of Tallis's written statement and told him to read it. Having read it, Doolan looked over at Tallis for a few seconds - according to the policeman - angrily, and then moved suddenly in Tallis's direction as if to attack him, shouting, "You lousy bastard!"

Advise on the admissibility in evidence at Doolan's trial - where his defence is mistaken identity - of the events at the police station.

(ii) Assume on the facts of (i) above that immediately after the robbery took place and while the two men were running away, the victim had heard a passerby call out, "Hey, Doolan, what's the hurry, man?" Is evidence of this statement admissible and, if so, to what end?

QUESTION 8

(i) A man enters hospital for the purpose of undergoing an operation. Before any operation is done, the resident doctor in charge of the case draws up a report on the patient's condition (Report A). After the operation has been carried out, it becomes clear that something has gone wrong. The consultant surgeon and nurses concerned make a report to the hospital authorities (Report B) pursuant to hospital regulations requiring them to do so in these circumstances. Fourteen days later, lawyers acting for the patient write to the hospital board alleging negligence in the carrying out of the operation; as a result the hospital authorities obtain a further report (Report C) from the surgeon and nurses. This last report is just in time for submission as well to the hospital board which has in the meantime become quite concerned about persistent rumours of widespread carelessness in the surgical wing.

Before the matter comes to trial, the plaintiff's lawyers seek discovery of all three reports. Advise whether this may properly be granted.

(ii) During the course of the accused's trial for larceny, counsel for the prosecution fortuitously comes into possession of a note apparently written by the accused to his counsel admitting an important allegation in the prosecution's case. The note was given to counsel for the prosecution by a police constable who had picked it up from the floor of the courtroom during the luncheon adjournment after having seen the accused write on a piece of paper which he passed up to his counsel earlier in the day. When the accused is cross-examined by counsel for the prosecution, he denies the allegation when it is put to him.

What use can counsel for the prosecution make of the note?
