

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1984

EVIDENCE AND FORENSIC MEDICINE
(Thursday, May 24, 1984)

1984
yr. 1

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)

- (i) (a) Give an account of the various types of asphyxial death.
- (b) Describe in detail the post mortem appearances in a case of drowning.

OR

- (ii) Write short notes on:
 - (a) Post mortem lividity
 - (b) Insanity
 - (c) Suicidal and homicidal stab injuries
 - (d) Injuries caused by different kinds of road-traffic accidents
 - (e) Circumstantial evidence
 - (f) Firearm entry and exit wounds.

QUESTION 2

(i) David is charged with raping Jean, his secretary. His defence is that, while giving her a lift home from work one evening, they were waylaid by gunmen who forced him to drive to a deserted part of town. Thereupon, he was forced by the gunmen to have sexual intercourse with Jean on the back seat of his car. In so doing, according to him, he did not act voluntarily, but purely out of fear and concern for the lives of both Jean and himself.

Gomes v R

Describe and explain the incidence and interplay of the legal burden of proof, and the duty of adducing evidence at the various stages of the trial of this matter.

(ii) W petitioned for divorce based on the adulterous conduct of her husband H. On the hearing of the petition, there was ample evidence of an attachment between H and a woman named S, during a period when they lived in different places and also of opportunity to commit adultery, they having subsequently lived in the same house. However, there was no direct evidence of adultery, though several raids had been made at the home by a private detective retained by W.

In dismissing the petition, the learned judge had this to say:

"I have no hesitation in saying that if this matter were to be decided on the basis of a simple preponderance of evidence the finding would be in favour of the petitioner, but I can only say that I find, upon reflection, that there is too much doubt in my mind for me to feel comfortably satisfied that adultery was committed."

W wishes to appeal; advise her.

(iii) "I have always understood it to be a general rule that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who avers the affirmative, is to prove it, and not he who avers the negative." - per Bayley J., in R v TURNER (1816)105 E.R. 1026.

Comment.

QUESTION 3

(i) In a civil suit for damages for negligence, the plaintiff, an infant suing by his next friend, gives evidence that he was standing on the sidewalk at the gate to his home in a quiet residential area when the defendant's motor vehicle came round a bend in the road at high speed, appeared to go out of control, mounted the sidewalk and ran him down. During cross-examination of the plaintiff by counsel for the defendant, the following exchange takes place:

Counsel: Now this accident took place some four years ago, did it not?

Plaintiff: Yes sir.

Counsel: How old are you now?

Plaintiff: Twelve years old sir.

Counsel: So you were very young at the time.

Plaintiff: Yes sir.

Counsel: Tell me now, you don't really remember how this accident took place, do you?

Plaintiff: I do sir; it happened the way I said.

Counsel: I am suggesting to you that you're making it all up and you don't remember at all.

Plaintiff: I do sir.

As counsel for the plaintiff, what use can you make in these circumstances of a copy of a statement in your brief given by the plaintiff to a police sergeant two days after the accident supporting his present account of what took place? Of what probative value is such a statement?

(ii) During the course of cross-examination of the complainant in a case of rape in which the defence is one of consent, it is put to her:

- (a) that she has on numerous previous occasions had voluntary sexual intercourse with the accused; and
- (b) that she is generally promiscuous and has had previous voluntary intercourse with various other men.

She denies both suggestions. To what extent, if any, may evidence be called to contradict her in respect of (a) and (b)?

(iii) You represent the accused on a charge of wounding in the Magistrate's Court. When the time comes to call the only witness for the defence apart from the accused, you discover to your embarrassment that the witness has in fact been sitting quietly in the rear of the courtroom throughout the proceedings. The magistrate is consequently minded to refuse to allow you to call him; however you manage to persuade him to agree to an adjournment to allow you to research the point.

What submissions will you make when the trial resumes?

QUESTION 4

During a criminal trial, the judge at the end of the prosecution's case wished to recall a witness for the prosecution who had already given evidence; the defence objected and the following exchange took place:

Trial Judge: "Surely I may recall a witness previously called by either side. I may even call a witness not previously called and this is so whether in a civil or criminal matter - how can you possibly object?"

Defence Counsel: "My Lord I would like to address the Court in support of my objection."

Trial Judge: "Please proceed."

What submissions should defence counsel make?

QUESTION 5

Martin was convicted of housebreaking and larceny. He appealed against his conviction on the ground that the trial judge permitted the prosecution to cross-examine him as to his record of some 40 previous convictions.

The appeal record showed that the chief prosecution witness, Harold, said that Martin gave him the stolen property to keep because he (Martin) had bought them at a sale and had nowhere to keep them at present. Counsel for Martin then cross-examined Harold on the basis that he was lying, that he wanted Martin in prison to get at Martin's wife and finally suggested to Harold that he was Martin's accomplice (there was no positive evidence of Harold either being an accomplice or wanting to get at Martin's wife). The prosecution then claimed that by cross-examining Harold as he did, the defence counsel had put Martin's character in issue and was granted the right by the trial judge to cross-examine Martin on his criminal record when Martin came to the witness-box.

How should the Court of Appeal decide the ground of appeal?

QUESTION 6

(a) John is taken into custody on December 17, 1983 for questioning in connection with a number of offences of housebreaking and larceny in the Mona area. He is placed in a cell at the campus police station and on the following day the questioning commences. Present are a Detective Inspector and a Sergeant of Police. Before the questioning begins, John says:

"Officers, before I say anything I need some assurance that I will get bail before Christmas, because I am a family man and my wife and children will miss me over the season, not to mention my own feelings."

The Detective Inspector responds by telling John sternly that he should know better and that responsible officers do not behave in that manner. "You had better talk and stop asking me damn fool questions about me giving you an assurance!" exclaims the Inspector.

The questioning commences and continues for an hour, during which time nothing of consequence emerges and John says nothing which implicates him in any way. At this point the officers take a break and John returns to his cell where his wife, who has come to visit him is waiting. After bringing her up to date on what has happened so far, John says to her:

"You know, I think that the Inspector is just being miserable; the last time I was in I got bail immediately after I told them the full story. I really want to get out of here and I think they'll let me have bail if I talk - what do you say?"

John's wife replies, agreeing with John, urging him to talk and telling him how much the children miss him already.

When the questioning resumes John announces that he is ready to talk because, although the Inspector won't promise him bail, he knows that the Inspector is a reasonable man who wouldn't keep a man from his family over Christmas. In response to this, the Inspector merely glares at John and tells him to hurry up because he hasn't got all day. He does not, however, caution John who now makes a full confession in respect of four of the thefts, at the end of which he reopens the question of bail. However, he is not given bail until December 24, 1983, by which time, he has made two further statements implicating himself in several of the other offences.

Advise on the proper ruling where, at John's trial on ten counts of housebreaking and larceny, he objects to the admissibility of the statements.

(b) On the resumption of a trial, in what circumstances may evidence of testimony by the accused on a voir dire into a challenged confession be led by the prosecution?

QUESTION 7

(a) Dunrobin, a lawyer, was charged with murdering his wife by poisoning her with arsenic. His defence was that she had committed suicide. On arrest he had been found to be in possession of a considerable amount of arsenic, but he said he had bought it and kept it for the purpose of killing weeds in his garden. It was proved at the trial that he had purchased the arsenic a short time before his wife's death. The trial judge admitted evidence suggesting that he had attempted to poison a fellow lawyer with arsenic some eight months after his wife's death and he was convicted of the murder of his wife.

Advise Dunrobin on his chances on appeal on the ground that the evidence in relation to the incident with his fellow lawyer ought not to have been admitted.

(b) Advise on the requirement for corroboration in the following cases:

- (i) Where a child gives unsworn evidence pursuant to the provisions of any of the regional equivalents of the U.K. Children and Young Persons Act;
- (ii) in rape cases;
- (iii) in affiliation cases;
- (iv) in a criminal case where the defence is an alibi.

QUESTION 8

(a) Eddie, a linesman with the local power supply company, died as a result of electrocution while doing maintenance work on one of the company's poles. His widow brought an action against the company under the Fatal Accidents Act claiming that his death was caused by the company's negligence in failing to provide him with a safe system of work and adequate safety equipment and material. The company's defence is that Eddie was responsible for his death by his negligence in failing to throw a breaker switch on the pole which would have stopped the flow of current in the vicinity.

The company proposes to call as a witness, Dougie, an employee of the company, who will testify that he was working on another pole nearby on the same road when he heard screams and looked and saw that Eddie had fallen to the ground.

By the time he clambered down his pole and ran down the road to where Eddie had fallen, a minute or so had passed and he heard Eddie, foaming from the mouth, exclaim: "Jesus, I always forget that breaker". Moments later he was dead.

Advise on the admissibility and effect of this evidence.

(b) "It is a clear and widely known principle of the common law in Jamaica, as in England, that a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence" - per Lord Diplock in HALL v R (1971) 1 ALL E.R. 322, at p.324. Comment on this dictum with reference to decided cases.
