

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1998

LAW OF EVIDENCE AND FORENSIC MEDICINE

(Monday August 10, 1998)

Instructions to Students:

- (a) Time: 3½ hours
- (b) Answer QUESTION 1 and FOUR others
- (c) Answer QUESTION 1 on a separate answer booklet provided
- (d) In answering any question, a candidate 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1 (Compulsory)

(a) The Abortion Act requires that two registered medical practitioners acting in good faith agree that the termination of a pregnancy is justified on four grounds.

Name two of these grounds.

(b) State the medico-legal importance of the presence of rigor mortis.

(c) What is the meaning of spontaneous abortion?

(d) As an Assistant at the D.P.P.'s Office you are asked to make a ruling on a case submitted by the police regarding a controversial shooting involving two security guards. The police report states that guard "A" was handing a .38 revolver to guard "B" when the weapon allegedly went off accidentally killing guard "B". The postmortem report states that "An entrance gunshot wound surrounded by a **circular patterned abrasion** is noted on the forehead of the deceased with a significant amount of gunpowder residue in the subcutaneous tissues."

(i) In your opinion what caused the circular patterned abrasion?

(ii) What was the range of fire?

(iii) A brief opinion

QUESTION 2

Sam was arrested on Sunday morning last for robbery at Lo-Hi Stores during the course of which a number of electronic items were stolen. It was alleged that the robber threatened the victim with a 9mm pistol in effecting the robbery.

When arrested Sam was questioned over a period of several hours and was given no refreshment. He was not advised of his right to an attorney. On Monday morning, Sam gave a statement to the police in which he admitted the offence and told them where the goods could be found. The police went to the place in question and retrieved a quantity of electronic items which were subsequently identified as the property of Lo-HI Stores.

- (i) The prosecution wish to tender the statement as evidence on the basis that it has been proved reliable since the items were retrieved. Advise prosecuting Counsel
- (ii) If the statement is not admitted can the items be admitted as evidence?
- (iii) Advise prosecuting Counsel whether the prosecution may tender a 9mm pistol found by the police at the home of Sam's mother the day after the robbery, in the course of with a warrant.

QUESTION 3

- (a) Frank wishes to sue the Hopeful Maternity Hospital for negligence as a result of the death of his wife arising from complications after a caesarian operation at the hospital. Frank tells you that apart from his wife, he knows of four other instances occurring in the last

year where women have either died or become seriously ill after receiving caesarian operations at the hospital.

Advise Frank as to whether he can call this evidence in his action against the hospital.

- (b) Sara is charged with burglary of Value Electronics where it is alleged she stole 10 Olympus cameras. A hidden video camera filmed Sara as she broke into the store around 10:00 p.m. using a special card to bypass the security. At the time she was dressed in black tights, black shirt, boots and wore surgical gloves. She also had a large handbag.

The police have had reports of breakings in three other nearby stores in which expensive camera equipment was stolen. Although there was no direct identification in each case, there is evidence that just before the burglary, a woman of Sara's age was seen in the vicinity of the store and at the time was dressed in black and carrying a bulky handbag. There is also evidence that the security system was rendered useless in each case.

- (i) Advise the prosecution whether the videotape is admissible in evidence on the charge of burglary.
- (ii) Assuming that the videotape is admissible evidence, what use can the prosecution make of it in respect of the three other reports?.
-

QUESTION 4

- (a) Esau is charged with importing Chiquita bananas from the United States contrary to the provisions of a local statute. Esau claims that the bananas are imported from Guatemala (which is not contrary to the law) as he stated in his customs declaration form. The attorney-at-law for the Customs Department wishes to tender into evidence a container in which the bananas came that bears the label "Goods ex USA".
- (i) Advise the magistrate whether a defence objection to this course has merit.
- (ii) Is Esau's declaration form admissible in evidence for either the prosecution or the defence and, if so, for what purpose?
- (b) Flynt is charged with inflicting grievous bodily harm on Soffy by hitting him on the shoulder and the back. When he struck, Soffy fell forward and did not see his assailant. He, however, heard a male voice say, "Is Flynt who hit the man with that jackhandle on his hand". Soffy looked up in time to see Flynt walking on the other side of the street carrying a jackhandle.

Advise as to the admissibility of the following -

- (i) the evidence of what the unidentified male voice said.
- (ii) a jackhandle found in Flynt's home on the day after the incident following a legal search by the police.
-

QUESTION 5

Amy and Christie are charged with conspiracy to export cocaine and trafficking in cocaine. The prosecution alleges that the cocaine was found in several Alo Face cream containers found in the suitcases of both women.

Amy's defence is that she had no knowledge that the containers had anything other than face cream and that they must have been substituted. In this regard Amy's lawyer wishes to introduce evidence of a polygraph test which she took, contending that the polygraph examiner is an expert. The magistrate says that the examiner may be an expert but he will not allow the evidence.

- (i) What is the basis for the magistrate's ruling?
- (ii) Amy's lawyer also wishes to call evidence that an accused man, Joshua, when pleading guilty to cocaine possession in another court, had told that other court that he was the person who assisted Christie in packaging the cocaine for export.

Advise Amy's lawyer on the proposed course of action.

QUESTION 6

- (a) Gayle is charged with indecently assaulting three boys, ranging in age from 9 to 13. The two older boys give sworn evidence while the youngest is permitted by the judge, after a voir dire, to give unsworn evidence pursuant to the applicable statutory provisions.

Advise on the issue of corroboration generally. Would it make a difference if all three boys give unsworn evidence?.

- (b) Assume that in (a) above, one of the boys tells the judge on the voir dire that "no talk of God is permitted in our home". The judge is, however, very impressed by his level of intelligence and allows him to give sworn evidence.

Advise on the propriety of this ruling.

QUESTION 7

- (a) Mikey is charged with the murder of his wife, Angie. His defence is a plea of insanity.

Advise on the burden and standard of proof.

- (b) On a charge of wounding with intent, Nick's defence is that he acted in self defence. In directing himself the magistrate says the following -

"I have to bear in mind that the only burden borne by the accused is that of making self-defence a live issue, fit and proper for my consideration. Once he has done this on a balance of probabilities, then it is my duty to examine the case for the prosecution to see if the case has been proved against him".

Nick is convicted and seeks your advice on whether the magistrate misdirected himself in the passage above.

Advise him.

- (c) Pat, an attorney-at-law, has been brought before the Disciplinary Committee for alleged misuse of a client's funds. He denies the allegation strenuously.

Advise on the standard of proof in proceedings before the Committee.

QUESTION 8

Dick is charged with indecent assault, the offence having allegedly been committed during a train journey, in which he and the complainant, Maud, were the only passengers in a forward compartment.

Advise the prosecution what use can be made of Dick's two previous convictions for dishonesty in the following circumstances -

- (i) where he calls a witness to testify to his reputation for good behaviour with ladies generally.
 - (ii) where, in an unsworn statement from the dock, he denies the allegations and says that Maud, who he describes as "a well known loose woman" who in fact offered him a sexual favour for a fee, which he refused.
 - (iii) where, in the course of his sworn evidence, he asserts his "impeccable character".
-