

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION, 1991

LAW OF EVIDENCE & FORENSIC MEDICINE

(Tuesday, May 21, 1991)

Instructions To Students

- a) Time: 3 1/2 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.

FORENSIC MEDICINE

QUESTION 1 (COMPULSORY)

- (a) What is the difference between a laceration and an incised wound?
- (b) Name THREE causes of asphyxia.
- (c) The Forensic Lab reports on a vaginal smear done on an alleged rape victim showed the presence of spermatozoa. Medico-legally, is this conclusive evidence of rape?
- (d) The defence argued in a murder trial, that the defendant was about to be attacked by the deceased man with a knife when he shot him in self defence. When questioned by the prosecution, the defendant stated he was standing about 5 feet from the deceased at the time he fired. The doctor gave evidence that an entrance gunshot wound was on the face of the deceased, surrounded by a wide area of blackening (soot).
- (i) What is the range of fire?
- (ii) Did the doctor's evidence support the defendant's story?
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LAW OF EVIDENCE

QUESTION 2

- (a) Noah and Alex are coming home from a party one night, somewhat under the influence of too much drink. As they weave their way on to the last bus home, a group of younger fellows start to taunt them, calling them "a pair of old drunkards" and "dirty rumheads".

At the terminus, Noah, Alex and the young men get off together and one of the latter approaches them in a menacing manner. Noah lashes out at him, breaking his nose and cutting his face, while Alex grabs a stone and flings it at the other fellows, causing a severe head wound to one of them.

Both Noah and Alex are charged with wounding with intent to inflict grievous bodily harm. Noah's counsel advises him that he has a good defence of self-defence, while Alex's counsel is seriously considering running a defence of drunkenness.

Advise generally on the burden of proof.

- (b) A statute dealing with offensive weapons provides as follows -

"Any person who without lawful authority or reasonable excuse has with him in any public place any offensive weapon as hereinbefore defined shall be guilty of an offence".

Advise on the burden of proof in a prosecution under the above section of this statute.

QUESTION 3

✓ Henry, James and Albert are jointly charged with burglary of a shop in Cross Roads. They each have a number of previous convictions for similar offences. The only evidence which connects them to the crime is that of Sam, who claims to have driven their get-away car and has now turned witness for prosecution. Advise on each of the following trial scenario -

- (a) Henry gives no evidence, but his counsel puts to Sam in cross-examination that he has 14 previous convictions for offences involving dishonesty, which Sam admits to be true. What use, if any, can the prosecution make of Henry's previous convictions?
- (b) James, in the course of giving sworn evidence, asserts flatly that Sam is a liar. Can the prosecution cross-examine James on his previous convictions?
- (c) Albert says in evidence that Henry, James and Sam invited him to help with the burglary, but he refused and did not take part. Can he be cross-examined on his previous convictions

and, if so, by whom?

QUESTION 4

- (a) Describe and discuss the "without prejudice" rule. What if any, is its practical value in the process of civil litigation?
- (b) Distinguish, with reference to decided cases, the rules of legal professional privilege as they relate to communications between attorneys-at-law and their clients and communications between attorneys-at-law or their clients and third parties.
- (c) You act as an attorney-at-law for one party to litigation and you receive a letter written by the attorney-at-law on the other side to a third party, which was obviously not meant for you. Is there any way in which your opponent can prevent you from making use of the letter and, if so, how?
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QUESTION 5

Baron Montague is charged with indecently assaulting his three maids seryants, Anne, Beatrice and Clarice. The offence against Anne is alleged to have taken place at the end of the first week in January 1991, some minutes after she had received her week's pay from the Baron. Of the three she was the last to be paid and when she was, the Baron told her that there was "a little extra in the pay packet" for her. In addition he gave her a package containing a cheap transistor radio and some exotic chocolates with liquor inside. It was very shortly afterwards (minutes really) that he proceeded to assault her.

According to Beatrice's statement very much the same things happened to her at the end of the second week in January. These include the sequence of the pay, the extra money, gifts and the assault.

In Clarice's case she has stated that at the end of the third week in January she was last in line for her pay from the Baron but was delighted to receive all the same extras her colleagues had told her they had received the previous weeks. However, as soon as she had received these things, the lights of the manor went out and the Baron told her to go and light some candles which were in an adjoining room. It was whilst she was in this other room that she was indecently assaulted in the dark. She cannot say who committed the act as it was very dark. She has stated that she did not believe that the Baron could or would do such a thing.

The Baron's defence is that he did not indecently assault any of the three ladies. He insisted that if he had touched any part of their anatomy, it would have been purely accidental in the case of Anne and Beatrice. According to him in Clarice's case he did not, and would and could not have done so as he would not have risked moving about in the dark. What is more he has pointed to the fact that he has dozens of robust guards around the manor and any one of them could have committed the offences.

Advise whether the evidence in respect of any of the incidents can be used at the Baron's trial to substantiate the other or others as the case may be.

QUESTION 6

Ethel is charged with manslaughter arising from the death of Constance. It is alleged that Ethel drove her car over Constance. Within a few seconds after the car ran over her, Constance exclaimed to Myrtle, the first person who came to her assistance - "I suppose that you saw how Ethel ran me over with her car!"

Later that day whilst she was being treated at the hospital Constance said to Nurse Dahlia "Nurse, all this is no use. The help has come too late. Before my time runs out I want to let you know that it is Ethel who drove her car over me immediately after she had said that she was going to get even with me and that she was going to scare me to death."

Within one week of sustaining her injuries Constance died, much to the surprise of her doctor and the nurses who had seen indications that she might recover.

Advise as to what grounds you as prosecuting counsel would argue to persuade the trial judge to permit Myrtle and Nurse Dahlia to give the evidence indicated above at Ethel's trial.

QUESTION 7 ✓

Two friends, Jacob and Raisa, gardener and maid respectively of the Jacksons, were charged jointly with stealing a radio from the house of their employer. Raisa fell out with Jacob and decided to tell the police the whole story of how they had contrived to steal the radio.

The story is that Jacob had got her to place the radio near to a window in the Jackson's house where Jacob could reach it from outside by putting his hand through the window and taking the radio because he was not allowed inside the house.

Pleased to receive evidence of this kind which would facilitate proof of the charge against Jacob, the police decided not to proceed with the charge against Raisa. They propose to use also the evidence of Fiona, the Jacksons' six-year old daughter, who has stated that she saw Raisa place the radio beside a window and a hand enter and take it away. She has also stated that

although it was a bit dark outside and the person whose hand came through the window moved away quickly before she could have got a good look at him, she had seen enough of him to feel sure that it was Jacob.

Assuming that at Jacob's trial the evidence given came from, amongst others, Raisa and Fiona (the latter was unsworn) and was in all respects as indicated above, what directions should the trial judge have given with regard to the evidence of these two witnesses?

QUESTION 8

Pancho is charged with the murder of Milena. Whilst in his prison cell awaiting trial he met a talkative cell-mate by the name of Brigo. In the course of their conversation Pancho made the following remark: "I want to tell you about my case but I have a feeling that you are a policeman and you could cause trouble for me." Brigo, who was wearing prisoners' uniform, told Pancho that he was not a policeman and that he should feel free to tell him everything about his case. Pancho was still reluctant to do so but Brigo insisted that he should tell him about it as it would make him (Pancho) feel better if he did so. Pancho proceeded to tell Brigo that he had in fact killed Milena but that he was going to deny it and plead not guilty. In addition he said he was going to

make it extra difficult for the prosecution to prove the charge by claiming to be insane. It has turned out that Brigo was a prison officer and thus his evidence of the conversation he had in the prison cell with Pancho could strengthen the prosecution's case considerably which up to then was based essentially on tenuous circumstantial evidence.

As prosecuting counsel what issues do you anticipate arising at the trial and how would you deal with them?
