

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATION, 1992

LAW OF EVIDENCE & FORENSIC MEDICINE  
(Wednesday, May 20, 1992)

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.

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MONA, KINGSTON, 7. JAMAICA

FORENSIC MEDICINE

Question 1 (COMPULSORY)

- (a) Sexually transmitted diseases (STD) are rapidly becoming not only a worldwide medical problem, but also a legal problem. Name THREE such diseases.
- (b) Simple blood group investigation cannot positively implicate an alleged father, but it can rule him out.

In a paternity case, the alleged father denied that the child was his. Blood was taken from all three persons involved and sent to the laboratory for blood group determination. The following results were received -

FATHER - GROUP A

MOTHER - GROUP O

CHILD - GROUP B

In this case, was the man likely to be the father?

- (c) With regards to the medical examination of a rape victim, name THREE test samples usually taken for forensic laboratory investigation, the results to be submitted to the Court.
- (d) In a murder trial, the pathologist stated that on examination of the deceased, a large, round, penetrating wound 4cm in diameter was noted on the anterior chest, from which several lead pellets, wadding and plastic piston were recovered.

The defence argued that the defendant could not have shot the deceased based on the pathologist report and because when apprehended shortly after the incident, he had a 9MM revolver. This fact was supported by witnesses at the scene of the shooting.

- (i) What type of weapon caused the injury, described by the pathologist?
- (ii) Based on your response, does this support the defence's argument?

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LAW OF EVIDENCE

Question 2

- (a) Don is charged with shopbreaking and larceny. At his trial the police witnesses admitted in cross-examination that although they had no search warrant they had broken and entered his warehouse. According to them, they found stored there a large quantity of goods which fitted the description of those stolen from supermarkets in his neighbourhood. These the prosecution intend to tender in evidence as exhibits in the case. Don's lawyer has objected and has submitted that the entry into Don's warehouse was illegal and therefore the police should not be allowed to tender in evidence the goods which they had seized through illegal methods.

Advise whether Don's lawyer should succeed in his objection.

- (b) Jackie is charged with larceny of children's clothing. Whilst in custody she pleaded with the police officer on duty

at the station to arrange for her to be bailed as quickly as possible. His response to her was an unmistakable hint that she could make things easier for her young baby who was in the care of her next door neighbour, if she would tell them anything which might help to clear up the case. As night was falling very quickly Jackie proceeded to lead the police officer to a location in some bushes where children's clothing, fitting the description of the stolen ones, were found.

Argue the case for the prosecution or the defence, as you wish, for the tendering in evidence, or the exclusion, of the fact that Jackie took the police officer and showed him the clothing in the bushes.

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Question 3

(a) On the occasion of a social gathering at his luxury apartment at which were present, amongst others, his lawyer, his doctor and his old friend, Reverend Glee, Grabbit called each aside in turn and disclosed to each, according to him "in confidence", what he described as his brilliant but fraudulent schemes by which he extracted large sums of money from very wealthy but gullible widows. He told the clergyman that he wanted him to treat what he had told him as he would a confessional communication; the lawyer, that it should be regarded as a strictly confidential matter just

in case he had to defend him in court; and the doctor - that he too should treat the matter in strict confidence for it was given to him to assist in properly diagnosing any illness which might befall him in addition to his hypertension.

Grabbit's butler, Earful, who was eavesdropping on his master's conversation and who had heard all that had been said, communicated it to the police. The police proceeded to arrest and charge Grabbit for defrauding the widows. Fearing that Earful might not prove to be a very reliable witness, the prosecution proceeded to summon the doctor, the lawyer and the clergyman as witnesses with a view to having them divulge the incriminating things which Grabbit had told them about his schemes. On being called to give evidence, each in turn claimed privilege and refused to give evidence.

Advise how the judge should rule in the matter.

(b) "Our system of civil procedure is founded on the rule that the interests of justice are best served if parties to litigation are obliged to disclose and produce for the other party's inspection all documents in their possession, custody or power relating to the issues in the action" - per Bingham L.J. in VENTOURIS V MOUNTAIN [1991] 3 All ER 472, 476.

Discuss, in the context of rules relating to legal professional privilege.

Question 4

(a)

Brown has sued Smith for damages for the car he negligently driving his truck - registration No. XLL 221 - and it is the trial Brown is unable to remember the number of the truck. However, he recalls that in the course of reporting the accident at the police station, he had caused the officer on duty - Constable Hilly - to write down the number of the car in the report.

(1) Can Constable Hilly be relied to give evidence as to the registration number of the truck which was a semi-truck in his case?

(11) Can Brown get any assistance from Constable Hilly's report for the purpose of giving evidence as to the registration number of the truck?

(b)

At Joseph's trial for the murder of Malcolm, the prosecution proposes to call Malcolm's widow, Lucy, who will say that immediately after Malcolm was shot as he opened the gate to his home, she heard him shout, "Look, he's dead now, John Paul killing son of a bitch". This is the only evidence implicating Joseph, who is John Paul's only son. Advise on the admissibility of Lucy's evidence.

Question 5

(a) ✓ Michael is charged with the murder of his father, with whom he lived. The case for the prosecution is that his father was terminally ill, and that Michael deliberately administered a fatal dose of whisky and barbiturates. Michael admits administering the mixture, but says that he gave a small measure of whisky and made a mistake about the proper quantity of barbiturates because the label had become detached from the bottle which held them. The prosecution wishes to adduce evidence that when Michael's bedroom was (lawfully) searched, a quantity of literature advocating "mercy-killing" (euthanasia) was discovered. The prosecution also had a statement from Michael's sister, Emily, with whom he has not been on good terms, which appears to implicate him in the death of their mother, who died a few years earlier after herself suffering from a debilitating terminal illness.

Advise the prosecution on the admissibility of this evidence.

(b) ✓ David has been convicted of indecently assaulting Elaine, a girl of 12. Elaine's sworn evidence was that when she was exercising her puppy at dusk in a public park, she was approached by a man who said that he had a puppy exactly like hers and invited her to his home, which he said was just two minutes away, to see it. On the way he talked obscenities to her and pulled her behind some bushes, where he committed an

innocent assault on her. She was not however, very confident in her identification.

Fay, a girl of 15, was allowed to give sworn evidence of an almost identical approach to her in a public park around the same time and also at night. She said she had run away when the man started talking obscenities and that no assault had been committed on her. Her identification of the accused is far more positive. Although Elaine and Fay attend the same school, it appears that they hardly know each other.

Advise on the chances of a successful appeal on the ground that Fay's evidence had been wrongly admitted.

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#### Question 6

Patrick and David are being jointly tried for larceny of concrete blocks from a building site near to Patrick's home. David has several previous convictions for dishonesty and Patrick has two previous convictions, one for larceny and another for rape. Patrick testifies that he saw David putting some of the blocks on a truck and went to enquire who gave him permission to do so when the police arrested them both. David makes an unsworn statement from the dock denying the charge and asserting that he is a man of substance and of good character and would not steal.

Advise whether -

- (a) Patrick may be cross-examined on his previous convictions;
- (b) evidence may be adduced to prove David's bad character.

Question 7

- (a) Norman is charged with robbing Olivia. The prosecution alleges that while Olivia was walking down a lonely road, Norman ran up from behind her, grabbed her handbag and ran away. Olivia continued her journey home and when her roommate, Phillipa, arrived home a couple hours later, she told her what had happened, identifying the robber as Norman, whom she alleged she knew before. Norman's defence is mistaken identity and during Olivia's examination-in-chief at his trial prosecuting counsel seeks to elicit from her evidence of her conversation with Phillipa. Defence counsel objects.

Advise on the admissibility of the evidence.

- (b) On the basis of the facts in (a) above, advise whether any special onus rests on the judge with regard to the question of identification.

Question 8

(a)

Daphne is the sole beneficiary of a trust established by her late uncle, Edward. Fred is the trustee and Daphne wishes to sue him for misuse of trust funds, her contention being that he has deliberately wired money from the fund with his own funds and has spent it.

Advise Daphne on the standard of proof.

(b)

Describe and distinguish between the legal burden of proof and the duty of adducing evidence.