

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

LAW OF EVIDENCE AND FORENSIC MEDICINE
(Monday, May 17, 1993)

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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FORENSIC MEDICINEQuestion 1 (COMPULSORY)

- (a) What is the difference between a laceration and an incised wound?
- (b) With regard to the medical examination of a rape victim, name THREE test samples usually taken for forensic laboratory investigation. State briefly what is the legal significance of these tests.
- (c) State THREE causes of asphyxia.
- (d) In a murder trial, the defendant testified that during a struggle for a firearm it discharged accidentally, the bullet hitting the deceased in the left chest. In cross-examination by the prosecution, the defendant stated that the weapon at the time it was discharged, was about 18 inches from the deceased. The doctor in his evidence stated that an entrance gunshot wound was noted on the left anterior chest of the deceased and this wound was surrounded by a circular patterned abrasion. Gunpowder residue was also noted in the subcutaneous tissue of the wound.

- (i) In your opinion, what caused the circular patterned abrasion?
 - (ii) What was the range of fire?
 - (iii) Give a brief opinion as to whether the doctor's evidence correlates with the defendant's evidence.
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LAW OF EVIDENCE

Question 2

Consider the burden and standard of proof on every issue arising in each of the following cases -

(a) Jane, a passenger in a car driven by Roy, her father, is injured when the car collides with another vehicle driven by Tom. Jane brings an action against Tom claiming damages in negligence. Tom denies liability, alleging that the collision was caused solely by Roy's negligent driving and that Jane's injuries resulted from her failure to wear a seat-belt which is a statutory requirement in your state.

(b) Robin is charged with assaulting Sam. Robin claims to have been acting in self-defence or alternatively that it was an accident.

(c) A statute relating to 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".

Peter was arrested at a secondary school and charged with using abusive and insulting language to a teacher of the school. On being searched a large flick knife was found on him. He was also charged under the abovementioned statute with having in his possession an offensive weapon.

Question 3

Jim is charged with raping Pat, who is 16 years of age. The allegation came to light when Pat was questioned by her father when she returned home several hours late on the evening of the alleged rape. Jim told the police that Pat consented and that she was known to be "easy", having already had sexual relationships with several of his friends.

Jim's wife, Diana, has told the police that he was infatuated with Pat and that on the evening in question Jim had returned home saying that he had got into a "bit of trouble" and that the police might be calling at the home. However, Diana has indicated that she is not willing to give testimony to this effect.

Advise the prosecution -

- (i) on the admissibility of Pat's complaint to her father;
- (ii) whether Jim's attorney-at-law will be able to cross-examine Pat on the alleged sexual relationship with Jim's friends;
- (iii) on the admissibility of Diana's statement to the police and whether she is a compellable witness for the prosecution.

Question 4

Paul is charged with indecently assaulting Jane, aged 12. The prosecution's case is that Paul lured Jane into his car to see pictures of children's carnivals which he had posted all over the inside of his car. He then indecently assaulted her. Jane gave a detailed description of her assailant and of the inside and outside of the car, including the fact that the inside of the car was covered with pictures of children's carnivals.

The police are aware that Paul has been convicted in the past for such types of offences. He was arrested shortly after the assault on Jane was reported. Paul's car was the same make and colour as Jane had described and the description she had given on the car's interior corresponded in every detail. Jane had no hesitation in identifying Paul at an identification parade as the man who indecently assaulted her. Paul claims that he has never seen or met Jane and has consistently asserted his innocence. He has also indicated that he does not accept that Jane has been indecently assaulted by anyone. The medical evidence indicates that Jane has had some sexual activity but cannot confirm that it is recent or its precise nature.

Advise the prosecution on -

- (i) The admissibility of evidence of the previous offences;
- (ii) the issue of corroboration.

Question 5

You are representing Jack on a charge of larceny. The prosecution's case is that Jack stole an expensive lady's evening dress and a pair of earrings, valued at \$500 and \$1000 respectively, from a parked car in one of the busy streets in your capital city.

Jack, who is aged 30 and has several previous convictions for robbery and burglary, will plead not guilty. His defence will be mistaken identity. The chief prosecution witnesses, who are police officers, will testify that they witnessed the commission of the offence as part of a surveillance operation conducted from an unmarked police vehicle and from private office premises in the immediate locality.

After his arrest, Jack, having been cautioned, asked to speak to his attorney-at-law, but this was refused by the officer in charge at the police station, on the ground that access to him might prejudice their inquiries regarding the earrings which had certain identifying marks on them. After five hours in custody, during which time he was interviewed twice, sometimes declining to answer questions, Jack made a statement admitting his guilt. He was then charged, cautioned and allowed to consult with his attorney-at-law.

Advise Jack as to -

- (i) the law (and any discretion) relating to the admissibility of his confession statement;
 - (ii) the extent to which you will be allowed to cross-examine the chief prosecution witnesses about the locations from which they claim to have witnessed the commission of the offences.
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Question 6

Bill is charged with the rape and murder of Paula, aged 15. The prosecution case is that Bill met Paula (whom he knew) as she walked along an unlit street in a residential area in your capital city at about 8.00 o'clock in the night. Bill there and then attacked and raped her at knife-point, and then stabbed her fatally. Bill's defence is that he has been wrongly identified. Consider the admissibility of the following pieces of evidence -

- (i) The evidence of Paula's mother, Macy that from her house nearby, she heard Paula's voice screaming "Bill, no".

 - (ii) Paula's screams brought her sister, Jane, running from the house. Jane, a nurse, comforted Paula and told her repeatedly that she would be alright. Despite such reassuring words Paula said to Jane, "It was Bill, he raped me. Jane, I'm not sure I'm going to make it. Tell them to bury me next to Grandad".

 - (iii) When Bill was arrested, Constable Dick interviewed him and without cautioning him, put to him that he had raped and murdered Paula. Bill remained silent.
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Question 7

(a) Describe and discuss 'the without prejudice rule'. What is its value in the process of civil litigation?

(b) While acting as the attorney-at-law for one party to litigation you receive a letter written by the attorney-at-law for the other party to a third party which was obviously not intended for you. You expect to use this letter in support of your client's case at the trial of the action. Your opponent requests a return of the letter and has threatened to prevent you making use of the letter.

If you attempt to do so, can he prevent you?

Question 8

Henry, James and Albert are jointly charged with burglary of a merchandise store. Each has a number of previous convictions for burglary. The only evidence which connects them to the crime is that of Sam who admits to driving the get-away car and who has decided to give evidence for the prosecution.

Advise on each of the following developments at the trial -

- (i) Henry gives no evidence, but his attorney-at-law puts to Sam in cross-examination that he has previous convictions for dishonesty which Sam admits to be true.

What use, if any, can the prosecution make of Henry's previous convictions?

- (ii) James, in the course of giving sworn evidence, asserts that Sam is a liar.

Can the prosecution cross-examine James on his previous conviction?

- (iii) Albert states in the course of his sworn evidence that Henry, James and Sam invited him to help with the burglary but he refused and did not take part.

Can Albert be cross-examined on his previous convictions and, if so, by whom?
