

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1994

LAW OF EVIDENCE AND FORENSIC MEDICINE

(Monday, May 16, 1994)

Instructions to Students

- (a) Time 3 1/2 hours
- (b) Answer QUESTION 1 and FOUR others.
- (c) Answer QUESTION 1 on a separate answer booklet 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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

FORENSIC MEDICINE

QUESTION 1 (COMPULSORY)

(a) What is the medical difference, if any, between a bruise and a contusion?

(b) What is rigor mortis?

(c) An alleged case of Carnal Abuse involving a 12 year old girl is reported to the police. The doctor's report states that "no injury is noted to the external genitalia and the hymen is intact. There are no obvious signs of penetration". However, the laboratory report of stains on the girl's panty as well as a swab of dried stains noted around the pubic region of the victim were positive for Semen and Acid Phosphatase.

In your opinion, are these findings legally consistent with the alleged offence?

(d) As an Counsel 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 post mortem report states that "An entrance gunshot wound surrounded by a Circular Pattern Abrasion is noted on the forehead of the deceased with a significant amount of gunpowder residue in the subcutaneous tissues".

In your opinion -

- (i) what caused the circular pattern abrasion?
- (ii) what was the range of fire?

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### LAW OF EVIDENCE

#### QUESTION 2

On a charge of murder, Paul's defence was that he had acted under the compulsion of fear of death. The evidence adduced by him was that, while driving a gang of drug addicts of which he was a member, they ordered him to drive through a police road block and in so doing, a police officer was fatally struck by the car. At his trial he was convicted and sentenced to death. On Paul's appeal against conviction and sentence, it was submitted by his attorney-at-law that the jury should have been directed that the burden of proving Paul's guilt rests with the prosecution

throughout in a criminal trial and never shifts and that the prosecution must lead evidence that would satisfy them (the jury) beyond reasonable doubt that Paul did not act under duress.

As attorney-at-law for the prosecution, how would you meet these submissions? Would your answer differ if Paul's defence was one of insanity or, alternatively, accident?

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### QUESTION 3

Vincent has been indicted for the offence of wounding Sarah with intent to do her grievous bodily harm. P.C. Jack, the investigating officer, will be called to give evidence against Vincent, having previously made a note in his notebook of the matters to which he is to testify. You have been asked to advise on the following -

- (a) may P.C. Jack refresh his memory from his notebook -
  - (i) outside the court before giving evidence?
  - (ii) while in the witness box?
  
- (b) if P.C. Jack is permitted to refresh his memory from his notebook in the witness box, may defence counsel (i) call for and inspect the notebook, and (ii) cross-examine P.C. Jack as to the contents thereof? If so, what should counsel bear in mind?

.../(c)

- (c) where the notebook becomes an exhibit, what direction should the judge give to the jury as to the use they may make of its content?
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QUESTION 4

Capone was charged with the murder of his employer and had been in the custody of the police for two days. His brother Jeeps went to the police station to seek bail for him. In spite of Jeeps' repeated requests, the police sergeant was adamant that Capone would not be granted bail. Eventually, Jeeps turned to his brother and said: "Cap, tell him the full story as to how it happened so he can let us go home. If you didn't do it, there is no way he can keep you here one minute longer and he knows it." Much to Jeeps' surprise, Capone told him to go home and comfort their mother. Two hours later and just before the lights were to be put out, Capone confessed to the other occupant of the cell in which he was placed that he had strangled his employer.

Advise as to -

- (a) the admissibility of Capone's confession;
  - (b) the procedure to be followed at the trial on an objection being taken as to the admissibility of the confession;
- and

- (c) whether at any stage of the proceedings Capone can be cross-examined as to the truthfulness of what is contained in the confession.
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QUESTION 5

Dipchand was charged with the murder of a woman whom he is alleged to have strangled. In the course of his trial the prosecution sought to adduce as evidence a letter he had written to his wife, from whom he is now divorced, asking her to destroy the will they were keeping for the deceased before, according to the letter, he "took care of her". The letter never reached Dipchand's wife but instead was intercepted by the Police. Defence attorney strove hard to get the trial judge to exclude the letter on the basis of a submission that the reception of the said letter in evidence would breach "the hallowed convention of confidentiality and privilege accorded communication between spouses".

As attorney for the prosecution -

- (a) what submissions would you make in response to defence attorney's submission?
- (b) if instead, Dipchand's wife did receive the letter but it was subsequently stolen and defence attorney made the same submission, would your response be any different?
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**QUESTION 6**

Ancil is charged with larceny/theft from his employer. He has had several previous convictions for larceny/theft. Tom, the foreman in the employer's business, is the main prosecution witness. Ancil gives evidence denying that he ever stole anything in his life and

- (a) denying the charge, says "I was never a thief, I am an honest man, I never do things like that",
- (b) denying that he ever stole anything from his employer, says "There are other workers who work in the factory with him. Any of them could have done it and one of them has been in prison before",
- (c) stating that "Tom's been a dishonest man himself because I already caught him with his hand in the employer's till. He probably planted the stolen items to implicate me".

The prosecution, based on Ancil's denials and assertions, wish to cross-examine him about his previous convictions. Ancil's attorney strongly objects. The judge invites both attorneys to address him on the matter.

How is the judge likely to rule?

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QUESTION 7

(a) Smart was charged on three counts of rape. The evidence for the prosecution was that each of three complainants had responded to advertisements in the leading weekend newspaper offering domestic employment. After telephone contact had been made, each complainant - over a period of two weeks - had been asked to meet her prospective employer in the public gardens where he told each of them that he spent a considerable amount of his time composing poetry. All three complainants testified that after meeting a man whom they identified as Smart and after some discussion about the prospective employment, the offence of rape was committed in a deserted area of the gardens. Smart was arrested and charged with the offences after an identification parade. The police subsequently visited his home armed with a search warrant and found dozens of letters addressed to his home applying for domestic employment.

Smart's defence is one of mistaken identity and at his trial he objects -

- (i) to the counts relating to the three complainants being tried together because he says the evidence of each is inadmissible in relation to the charge in respect of the others, and
- (ii) to the admissibility of evidence of the letters found at his home.

Advise the prosecution on both grounds of objection.



(b) Discuss and distinguish between cases in which corroboration is required by law and by practice.

(c) Advise what would be an appropriate direction to the jury on corroboration in (a) above.

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**QUESTION 8**

Advise on the admissibility of the evidence in the following cases -

(a) Andy is charged with arson of a shop in which he carried on business. The only evidence to contradict his alibi was that of a policeman, who swore that on approaching the shop some half an hour after the conflagration began, he heard a woman in the crowd of spectators exclaim to a passing motorist, "How come your place is burning and you are going away from the fire"?

(b) Bunny is charged with fraud in that he falsely represented to his customers that the flour he was selling was milled in Canada. At Bunny's trial, the prosecution was allowed to exhibit as evidence several bags of flour in the front section of Bunny's shop with the inscription thereon: "Produce of Insula". Insula is not a place in Canada.

(c) Dagger is charged with the murder of his wife. A witness testifies at his trial that she heard gun shots and screaming inside the couple's room and on listening more intently, she heard distinctly when the wife said, "Dagger, if you shoot me once more

I am going to die!" Soon after there was a "bang" and the wife came running out of the house bleeding profusely. She died within seconds.

(d) Hagar is charged with raping a young lady whom he was giving a ride in his car from Kingston to a remote part of St. Thomas. Her evidence is that he parked the car at a deserted spot and committed the offence. His defence is duress: the car, he says, was hijacked by gunmen, who robbed both himself and the complainant and ordered him to have sexual intercourse with her, upon pain of being shot. This evidence is admitted but after an adjournment in which the trial judge apparently reconsiders the matter, he returns to court and directs the jury to ignore any evidence of what the gunmen are alleged to have said to Hagar because such evidence is hearsay.

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