

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1995

LAW OF EVIDENCE AND FORENSIC MEDICINE

(Monday, May 15, 1995)

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

1995

QUESTION 1 (COMPULSORY)

- (a) The U.K. Abortion Act, 1967, requires that two registered medical practitioners acting in good faith agree that the termination of the pregnancy is justified on four grounds.

Name TWO of these grounds.

- (b) Substance abuse is not only a legal problem, but in general a community and public health concern. Make the correct association of the following drugs with the given answers -

DRUGS:	(1) Cocaine	ANSWERS:	- Poppy
	(2) Heroin		- Cannabis
	(3) Marijuana		- "Crack"

- (c) With regard 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) John Bully was allegedly shot and killed by two accused men, "Gold Tooth" and "Dread". The police investigation shows that "Gold Tooth" was carrying a shotgun and "Dread" a 9 mm semi-automatic revolver. However, both men are now blaming each other for the actual shooting. The pathologist's report states that on examination of the deceased, a large, round, penetrating wound 4 cm in diameter was noted on the anterior chest, from which several lead pellets, wadding and a plastic piston were recovered. This was the only gunshot wound on the body.

- (i) What type of weapon caused the injury described by the pathologist?
  - (ii) Based on your response to the above question, which of the accused men, if any, could be charged with the murder?
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LAW OF EVIDENCE

QUESTION 2

Advise the appellant which, if any, of the following directions to the jury accurately represents the law as to the burden and standard of proof in a criminal case. Give reasons for your advice -

- (a) "The accused has alleged that he was insane at the time he committed the assault. If you are to find that he was insane then it is for him to satisfy you of this so that you feel sure of his insanity."
- (b) "The accused pleaded accident in this case. Now, the law says that it is for the accused to satisfy you of that fact. That does not mean that he has to prove it beyond a shadow of a doubt, but it does mean you must feel that it is more likely true than not."
- (c) "The accused claims he only punched the complainant in order to defend himself. Whether this is true or not is for you to decide. I can tell you,

however, that if the prosecution has not demonstrated his story to be false, you must acquit him."

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QUESTION 3

Billy and his wife Agnes have had serious marital difficulties since he began accusing her a year ago of having an affair with his best friend. She has recently left the matrimonial home because of Billy's violent and abusive behaviour towards her. Since her departure Billy -

- (i) wrote several letters to Agnes threatening to kill her;
- (ii) attempted to murder her by poisoning on an occasion when they met with a view to reconciling their differences; and
- (iii) fired a shotgun at Agnes and her brother while they were enjoying themselves at a picnic in a secluded spot thereby killing Agnes' brother instantly and injuring Agnes.

Advise as to whether Agnes can properly give evidence where Billy is charged with -

- (a) threats (in the case of the letters);
- (b) attempted murder (in the case of the poisoning attempt);

- (c) attempted murder of Agnes (in the case of the shooting incident);
  - (d) the murder of Agnes' brother.
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#### QUESTION 4

In the course of the accused's trial for wounding with intent, the prosecution called a witness to give evidence of a conversation which had taken place five days after the commission of the offence in which the accused had admitted his involvement in the crime. The witness had made a written statement to that effect about a month later. When he came to give his evidence he could no longer remember the details of the conversation. On an application by the prosecution, the defence attorney objecting, the witness was allowed to withdraw from the witness box and to refresh his memory from the document. He thereafter returned and continued giving his evidence. The accused was convicted and now wishes to appeal his conviction.

Indicate -

- (a) what submissions defence attorney would have made in his objection;
  - (b) what reply the prosecuting attorney would have made in response thereto; and
  - (c) what the likely result of the appeal would be.
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QUESTION 5

Paul, aged 12, while about to cross the road on his way to school, was knocked down by a car and was seriously injured. The car did not stop. The police have now charged Adam with reckless driving and the prosecution wishes to adduce the following items of evidence -

- (a) a statement from Paul -
  - (i) that he saw the car swerving before it knocked him down;
  - (ii) that the car did not stop after the accident;
  - (iii) that the driver of the car appeared to be drunk;
  
- (b) a statement from Angela, Paul's sister aged 6 years, to the same effect as that of Paul;
  
- (c) a statement from Alice, aged 60 years, that, while she was about to board a bus which had stopped approximately one hundred 100 metres away from the scene of the accident on the opposite side of the road, she observed that a car had swerved, knocked down Paul and continued without stopping.

Advise the prosecution whether any special considerations apply in respect of each of the above statements.

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QUESTION 6

- (a) Samantha is charged with the murder of Demon. Victoria is prepared to testify that Demon telephoned her and said "Please come quickly. Samantha is threatening to stab me....."

The phone then went dead. Victoria rushed to Demon's house and found him lying in a pool of blood. Demon said "You are too late Victoria. She's done it. I have great pain in the stomach where she stabbed me."

Discuss the proposed testimony of Victoria.

- (b) Taylor is charged with the murder of Pat, by strangling him with a rope. Is evidence admissible -
- (i) that David, who was walking past Pat's business premises at about the relevant time, heard a voice shouting "What are you doing with that rope Taylor?"
  - (ii) that Viv, when dying of cancer six weeks after the killing, confessed that he was the person who killed Pat?

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QUESTION 7

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

- (a) Alex, a drug dealer making vast profits, wishes to move his money to a foreign country out of the reach of the police. He goes to his attorney to seek legal advice about the transfer of the money. The drug dealer runs an apparently respectable business and accordingly his attorney sets up a scheme for the transfer of the money. The police on the execution of a valid search warrant at the business premises of the drug dealer, seizes the document containing the advice given by the attorney and proposes to introduce it in evidence at the trial of Alex.
- (b) International Bankers Limited (IBL) called in their auditors to investigate and report on problem loans. After perusing the report, IBL, through their attorneys, sent a copy thereof to the attorneys for Commercial Traders Limited (CTL) seeking their assistance to persuade CTL to settle all outstanding loans they had made to them. CTL did not respond. At the trial of the action between IBL and CTL, CTL sought to adduce the report in evidence. IBL objected on the ground of legal professional privilege.
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QUESTION 8

- (a) Vernon and Tom are being tried jointly with robbery with violence. Tom has several previous convictions, among them one for embezzlement and another for rape. Vernon testifies that he saw Tom pointing a gun at Eddy, who

took off his watch and handed it to Vernon. Eddy thereafter emptied his pocket and handed over to Vernon the money he had therein. Vernon further testifies that when he saw Tom robbing Eddy he went over to Tom to ask him why he was robbing his good friend and while so doing the police appeared and arrested them both. Tom gives evidence denying the charge and asserting that he is a man of substance and has no reason to steal from anyone.

Advise whether both Vernon and Tom can be cross-examined on their previous convictions.

- (b) During the course of Albert's trial for murder, Bert, the only witness for the prosecution, is vigorously cross-examined by Albert's attorney with a view to establishing that his (Bert's) identification of Albert as the killer was motivated by spite and ill will towards Albert and that he (Bert) had not in fact witnessed the incident or ever known Albert before. At one stage of the cross-examination it was in fact put to Bert that he is "a notorious liar and perjurer". The prosecution have in their possession information that Albert has two previous convictions, one involving wounding with intent and the other dangerous driving.

Advise what use may be made by the prosecution of the previous convictions of Albert where, at the close of the prosecution's case, an unsuccessful no case submission having been made, Albert elects to remain silent and to rest on his submission, calling no witnesses.

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