

COUNCIL FOR VOCATIONAL LEGAL EDUCATION

ATTORNEYS' EXAMINATION - SEPTEMBER 2018

PAPER V - EVIDENCE

(THREE HOURS)

Candidates have ten minutes to study the Examination Paper which consists of 8 pages before they start writing.

Marks will be granted, where appropriate, for correct reference to enactments and case law.

EACH QUESTION MUST BE ANSWERED ON SEPARATE SHEETS WITH CLEAR MARKING AS TO THE QUESTION ANSWERED AND THE NUMBER OF PAGES.

MAKE SURE THAT YOU PUT ALL YOUR ANSWERS IN THE ENVELOPE PROVIDED.

All questions carry equal marks and there are SIX QUESTIONS in all.

Candidates must answer only FOUR QUESTIONS.

Question I

Romeo is charged before the Intermediate Court with the offence of wounds and blows causing death without intention to kill on the person of Juliet.

The prosecution has a statement from Rosaline to the effect that on Saturday 9 June 2018 at around 14.00, she arrived at Romeo's apartment which is located in Plantain Building, Royal Road, Beau Bassin. Reaching there, she saw Romeo dealing several heavy blows to Juliet's head and face. When Romeo saw Rosaline, he stopped hitting Juliet who immediately left the spot. Rosaline is Romeo's wife. She has obtained a protection order against Romeo because of domestic violence and has filed divorce proceedings against him. They have not been living together since May 2017 and according to Rosaline, Romeo was entertaining an intimate relationship with Juliet.

Mercutio, a bus driver working for the United Bus Service Ltd, stated to the police that on 9 June 2018, he was scheduled to operate along bus route No. 2 which runs from Curepipe to Port Louis via Beau Bassin. At around 14.20, a young woman boarded the bus at the Plantain Building bus stop in Beau Bassin. She appeared to have a bleeding lip which she was covering with a handkerchief. A few minutes later, by the time the bus reached Grand River North West, alarmed passengers informed him that the young lady had collapsed. Thereupon, he parked the bus and called SAMU in order to convey the young lady to hospital.

Mrs. Montague told the police that she was travelling on the bus from Curepipe to Coromandel on 9 June 2018 to visit her grandchildren. On the way, a young lady boarded the bus and sat next to her. She bore several bruises at her face and appeared unwell. She felt much compassion for the young lady and enquired about her state of health.

Thereupon, the young lady replied: "Romeo has done this to me".

Dr Capulet performed the autopsy on Juliet and stated in his report that the cause of death was brain injury as a result of violent blows administered to the head. Dr Capulet has since migrated to Canada.

You have been appointed counsel *in forma pauperis* for Romeo. He has informed you that he intends to plead guilty. Advise him in the light of the evidence above.

Question 2

Moses is being prosecuted for possession of a prohibited substance in breach of section 20 of the Prohibited Substances Act, which provides as follows -

"No person shall possess a substance containing more than 0.5 percent of codeine unless he has a medical certificate authorising him to do so."

Moses works for General Pharmaceuticals Ltd. The offence was reported to the police by Trevor, the security guard at the place of work of Moses. Trevor handed over 5 bottles of Codinex to the police, which, according to him, he found in the bag of Moses during a routine search at the end of the working day.

The labels on the bottles of Codinex indicate that the substance inside the bottle contains 2 percent of Codeine.

Roger, the Factory Manager, stated to the police that there were 5 bottles of Codinex missing from the physical stock of the company. He further stated that Moses was a model employee and that a few weeks earlier,

Moses had reported to him that Trevor was sleeping during working hours. After an internal enquiry and after giving Trevor an opportunity to give his explanations, the facts were found proved and Trevor was given a warning.

Moses, who is employed as storekeeper at the warehouse where Codinex is kept, has chosen to remain silent and not to give any statement to the police.

Discuss whether there is sufficient evidence to establish a criminal charge against Moses pursuant to section 20 of the Prohibited Substances Act.

Question 3

George is charged with the offence of child abduction before the Intermediate Court.

The alleged victim is Emmett, aged 6 years old. According to Emmett, on a late afternoon he was sitting on the beach in Flic en Flac when George suddenly lifted him and carried him away over a certain distance. George then put him down. At that stage, he bit George and ran to the street where he met with WPC Diligent who took him to Flic en Flac police station. He met his parents at the police station. Emmett said that he managed to see George's face for a few minutes when he put him down. Emmett suffers from autism but has a photographic memory.

WPC Diligent stated that she was on patrol along the coastal road in Flic en Flac when Emmett ran to her and stated that he had been abducted by a man. He was in a distressed state when she saw him. She looked around but did not see a man of George's description in the vicinity.

George denied the charge against him and stated that at the material time, he was fishing in Case Noyale. However, PC Gontran has recorded a

statement from John, a taxi driver, stating that he had dropped George in Flic en Flac at the material time. John has since passed away.

George has several previous convictions for offences against children.

Advise the prosecution.

Question 4

Vaina has been married to Ruben for 10 years. She has reported several cases of assault against her husband in the past and obtained a protection order against him a year ago. However, Ruben was never convicted for any offence of assault or breach of protection order since Vaina would always make a withdrawal statement in court.

On 15 July 2018, Vaina had an argument with Ruben. Ruben did not like the food and threw his plate on the floor and it smashed to pieces. Vaina was scared and ran into her room. Ruben then took a bottle of alcohol, poured its content on her, lighted a match and set her ablaze. The whole scene was witnessed by Vaina's son, Alvin who suffers from mild mental retardation

During a search effected at Ruben's house, the Police found a bottle of alcohol with Ruben's fingerprints on it. However, it was later discovered that the search warrant was not signed by any Magistrate.

Mr Bean, a nosy next door neighbour, gave a statement to the Police alleging that a month before the incident, he heard the voices of Ruben and Vaina arguing and Ruben shouting "I'm going to burn you alive!".

By virtue of a duly signed search warrant, the Police also discovered on Ruben's office computer a history of Google searches about the various means of setting someone on fire.

Ruben is now being prosecuted for murder before the Assizes. Discuss the evidential issues arising.

Question 5

Pauline, a Chinese National, has been arrested on a charge of larceny by scaling. She came to work in Mauritius only a month ago, and can only understand a few words of English. She is brought to the Police Station of Rose Hill where, despite her request to be provided with an interpreter, a statement is recorded from her in English. The recording officers, in sign language, make her understand that she has nothing to worry about and that she only needs to sign the document. Pauline signs the statement. It turns out to be a full confession to the offence of larceny by scaling.

The other evidence against Pauline is the testimony of an eye witness, Daniel, who is convinced that he saw Pauline climbing over a wall to get access to the house where the theft was committed. It was midnight, and a cyclone warning class one was in force in Mauritius. Daniel who wears glasses is a neighbour whose home is about 30 metres away.

The Police also secured the CCTV footage from Joan's camera located opposite the complainant's house, which when viewed, shows Pauline climbing over the wall to get into the property of the complainant. However, just before the trial, Joan passed away.

The Police is also in possession of a letter written by Pauline, addressed to her employer, wherein she admits having committed the offence and begs her employer not to sack her.

Pauline is now being prosecuted before the Intermediate Court. As Prosecuting Counsel, what are the evidential difficulties which you might face and how will you deal with them?

Question 6

Yasmin is being prosecuted under a first count of involuntary wounds and blows by imprudence and under a second count of driving with alcohol above the prescribed limit, following a road accident which occurred on 17 July 2018. During the trial, the Prosecution attempts to produce the medical certificate of Ryan, who was injured in the road accident. However, the doctor who examined Ryan has migrated to France.

CPL Gokhool examined the two vehicles involved in the accident. He depones under oath in Court and gives his profession as Police Corporal Gokhool, posted at Pope Hennessy Police Station. He then produces his report explaining that he put up the report after examining the two vehicles involved in the accident on 17 July 2018. The Prosecutor seeks to question him about the force of impact which could have caused the accident and the speed at which Yasmin's vehicle must have been going.

During the trial, Ryan, unprompted, states in Court that Yasmin is known for being a heavy drunkard and that it is not the first time that she has had a road accident when drunk.

Another Prosecution witness, Todd, gives evidence in Court that on 16 July 2018 at 22 00, he saw Yasmin leaving the supermarket with several bottles of beer in her hand.

Discuss the evidential value and admissibility of the various items of evidence which the prosecution seeks to adduce at the trial.