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Questions and Answers

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Questions and Answers

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A variety of interesting questions were sent by readers of the JOURNAL to the editor during the previous months. We invite further contributions. This issue includes replies to such inquiries as (1) What is the Borstal System of criminal rehabilitation? (2) If a photograph is rejected as evidence on the ground that the lens of the camera is distorted, what steps can be taken to prevent similar objections in other cases? (3) What is the common law? (4) Is a confession gained through the use of a lie detector test admissible as evidence? (5) What is the best evidence rule? (6) Under what circumstances can evidence of a previous offense be admitted in proving the offense charged? (7) Where the defense of insanity is raised, what is the attitude of courts in admitting evidence of hereditary insanity? (8) Must a police officer warn a suspect of his constitutional rights before obtaining a confession? (9) What is the distinction between motive and intent? (10) Where does jurisdiction lie in a certain hypothetical case?

Question: What is the Borstal System of criminal rehabilitation and when was it founded?

Answer:

Passage of the *Prevention of Crime Act* in 1908 by the British Parliament represents a significant landmark in the evolution of penal reforms and in many respects constitutes the foundation of the Borstal System of criminal rehabilitation. Some twelve years previous to the passage of the act, the British Home Secretary appointed a *Department Committee on Prisons* to inquire into the administration of English prisons. The committee found among other things that: (1) an imposing number of prison inmates were youths between the ages of 16 and 21, (2) many of the youthful offenders came out of prison as bad or worse than when they entered, and (3) most habitual criminals began their criminal careers during the youthful period of 16 to 21 years. Because of these situations, the committee recommended that the government should make every effort through rational treatment to restrain incipient criminals from recruiting criminal classes.

As a means of determining the soundness of the recommendations of the Committee, a wing of the Bedford Prison was utilized for the dual purpose of segregating youthful offenders from the more hardened criminals and to permit establishment of a program of training and assistance for youthful offenders placed therein. Value of the new attack on the problem was soon apparent and the further decision was made to reserve a wing of the prison at Borstal for rehabilitation purposes. Borstal Prison then became the laboratory through which experiments in rehabilitation were tried. As the system took root, its principles were adopted in other prisons and places of incarceration until now eleven institutions in England are devoted exclusively to the training of youthful offenders according to Borstal methods.

Rehabilitation, not punishment, is the guiding principle of Borstal. In most of the Borstal institutions major time is spent on economic production and education on the assumption that idleness breeds mischief. Compensation is given for work done. Schooling, given by qualified instructors selected under civil service, is essentially practical and is designed to further a youth's ability to earn a livelihood. The traditional prison atmosphere is negated. Civilian dress is worn by youths and members of the institutional staff. Frequent visitors are allowed and youths are permitted to visit nearby areas singly or in groups for recreation, work, or study. Most

¹ Northwestern University Traffic Institute, Director of Research and Information.

of the Borstal institutions are neither barred, walled, nor fenced. Continued maintenance and strengthening of contacts with the outer world are encouraged.

By virtue of parliamentary enactment, judges are empowered to order detention in a Borstal institution in any case, 16-21 years, "where it shall appear to the court by reason of criminal habit or tendency it is expedient that the offender shall be subject to such instruction and discipline as appears most conducive to his reformation and to the repression of crime." Release on parole is a fundamental part of the program of rehabilitation. When recommendation for release is made by the board of the particular section in which the youth is stationed, he is placed under the supervision of a semi-official body known as the Borstal Association. Assisted by its many branches and volunteer groups, the Association aids in finding employment for the parolee and supplies him with lodging and funds until he is able to secure his own livelihood. Until work is secured, the parolee is visited at frequent intervals for purposes of observation and consultation. In brief, the Borstal System stands for the proposition that confinement for offenses committed should not be designed as a means of punishment for a wrong done, but as a channel through which the offender may be guided toward the accomplishment of a useful life. For a systematic account of the Borstal System see Healy and Alper, *Criminal Youth and the Borstal System*.

Question: In a recent trial a photograph was rejected as evidence on the ground that the lens of the camera employed in taking the photograph was distorted. What procedures should be adopted to overcome such an objection?

Answer:

Lens distortion constitutes valid ground for objection. That being the case, it is advisable to have lenses certified as accurate by the United States Bureau of Standards, Washington, D. C. Presentation of a certificate of accuracy at the trial will check objection.

Question: I should like a definition of common law.

Answer:

Common law is described in *Black's Law Dictionary* as follows: "As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England."

Question: Is a confession gained through the use of a lie-detector test admissible as evidence?

Answer:

Such a confession was admitted in the recent case of *Commonwealth v. Hipple*, 333 Pa. 33 (1939). The defendant, charged with murder, was given a lie-detector test, and after the test confessed to the murder. The lower court admitted the confession over the objection of counsel that the confession had been gained through use of a lie-detector. The Supreme Court of Pennsylvania upheld ruling of the trial court on the ground that since no promise, force, or threat was employed in obtaining the confession, mere use of the instrument did not render the confession inadmissible. And as Fred Inbau has stated in *Lie Detection and Criminal Interrogation* (p. 68): "It may be stated as a general rule . . . that despite the inadmissibility of the lie-detector test results themselves, any confessions, admissions, or other evidence obtained in consequence of the use of the instrument are competent and admissible, provided, of course, that all essential legal requirements have been fulfilled."

Question: What is the best evidence rule and what are its limitations in trial procedures?

Answer:

During the 17th and 18th centuries when jurists and text writers were formulating many of the fundamental rules of evidence, one principle was given special emphasis: a person must bring into court the *best* evidence he can. One of the chief reasons for the rule was that in the early days of the common law, the legal profession looked upon certain documents as being of value in themselves. A bond calling for the payment of money was considered an obligation in itself and loss meant cancellation of the obligation. A document conveying title to real estate was looked upon as having some sort of magical power of transferring title. It was only natural, therefore, that great importance was attached to the *original* and the rule was laid down that the original must be produced, a copy or substitute being admissible only if the original could not be produced. Stated in modern terms, the best evidence rule requires that wherever feasible, the original of a writing or written document must be produced.

It should be emphasized that the rule applies only to documents and writings, not to most other forms of real evidence. Thus, one could not object to submission of a photograph of a wrecked automobile on the ground that the vehicle in question is the best evidence. However, courts have given broad interpretation of what constitutes writings. These include typewritings, printed matters, drawings, checks, stubs, labels, inscriptions, and a variety of other formal and informal evidences. In general, the best evidence rule requires that the original must be produced unless: (1) it is destroyed, (2) it is in the hands of some other party who will not surrender it, (3) it is of such a nature that producing it in court is not feasible, (4) it is of such an official nature that producing it in court is not deemed advisable. Consult Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, Vol. 2, secs. 1173-75.

Question: Defendant is arrested and charged with the murder of her second husband. Could the fact that her first husband died under similar circumstances and that she collected his insurance be shown in court as a means of supporting the murder charge?

Answer:

The rule is well established that evidence of another crime or crimes committed by the defendant is not admissible as a means of implying guilt of the crime charged. However, the rule has many exceptions and one of them is this: evidence of other crimes is admissible for purposes of disclosing a common plan or design. This is strikingly illustrated in a recent English case of *Rex v. Smith*, 11 Criminal Appeal Reports, 229 (1915). The defendant was charged with murdering his wife by drowning her in a bath tub. Investigation disclosed that a former spouse of the defendant had been found dead under similar circumstances and that in each instance the defendant had collected death insurance. Evidence of the death of the former spouse and the situations surrounding her death were admitted as means of disclosing the motive or design backing the offense charged.

Question: A person is on trial for homicide. Defense of insanity is raised and in the trial evidence of insanity in the defendant's family was submitted to support the issue. Will courts admit evidence of insanity in a person's family to prove the mental incapacity of the defendant?

Answer:

The fact that certain types of insanity are deemed hereditary has led courts to admit evidence of insanity in a person's family as denoting mental incapacity. But it should be said that courts look upon such evidence with doubt and will, as a rule,

admit evidence of family or ancestral insanity only if some evidence has been given that *the defendant also has shown signs of derangement*. In other words, courts will not infer that a person is mentally deranged simply because manifestations of mental derangements have appeared in his family. Since a condition of mental disease is always a more or less continuing one, evidence of mental derangement prior to the time of trial is always admissible. However, much depends upon the type of insanity and the length of time intervening. In one instance (*Murphree v. Seem*, 18 So. 264) evidence that a temporary aberration was suffered 20 years previously was not admitted in the absence of evidence showing intervening aberrations.

Question: I should like to know whether I, a police officer, must warn a suspect of his constitutional rights before obtaining a confession from him?

Answer:

Generally, the answer is "No." Courts in a number of states have held that in the absence of a statute specifically requiring a criminal interrogator to advise or warn an offender of his constitutional rights before obtaining his confession, it is unnecessary to do so. Texas is the only state in which such a statute has been enacted. The validity of a confession in other jurisdictions is unaffected by the fact that the offender was not advised of his constitutional rights relating to self-incrimination. For citations in this connection consult Inbau, *Lie Detection and Criminal Interrogation*, p. 128.

Question: What is the distinction between motive and intent?

Answer:

Motive is the moving power which impels one to perform some act. It is concerned primarily with the *desire* of the person. Intent refers to the resolve to perform the act. When a starving person steals a loaf of bread, his intent is to steal, his motive is doubtless to satisfy his hunger.

Question: Where would jurisdiction lie in the following hypothetical situation: The defendant, John Doe, buys some candy in Chicago, purchases a package of poison in Detroit, puts the poison in the candy in Cleveland, mails the poisoned candy to Smith in Boston. He boards a vessel flying the Norwegian flag. Somewhere between Boston and New York he ate the candy, became ill and was rushed to a hospital in Philadelphia where he died?

Answer:

From the viewpoint of the law of crimes, a crime is deemed to be committed where the last significant act took place. Thus, if a person stands in Illinois and shoots a man in Iowa, the Iowa courts will have jurisdiction. If a person is struck by an automobile in Jones County and is rushed to a hospital in Smith County where he dies, the crime, if any, will be considered as committed where the accident occurred, not where death ensued. According to these considerations, it is apparent that in the hypothetical case listed above authorities in Chicago, Detroit, Cleveland, and Philadelphia would not have jurisdiction since the eating did not take place in any one of those jurisdictions. If the candy was eaten when the vessel was on the high seas beyond the three-mile limit, Norway would probably have jurisdiction since the vessel was flying the Norwegian flag. If the candy was eaten as the vessel was proceeding within the three-mile limit, the federal courts of the United States would have jurisdiction. If it could not be determined where Smith ate the candy, the case could be tried in either terminal—Boston or New York—upon the proposition that when a crime involved action in more than one state, any state where an essential act took place can exercise jurisdiction. For discussion of the problem consult *Corpus Juris* and *American Jurisprudence*, the topics "Venue" and "Jurisdiction."