

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2011

EVIDENCE & FORENSIC MEDICINE

(MONDAY, AUGUST 8, 2011)

**Instructions to Students**

- (a) Time: **3 ½ hours**
- (b) Answer **QUESTION 1** and **FOUR** others.
- (c) **Answer QUESTION 1 on a separate answer booklet provided.**
- (d) In answering any question, a candidate 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.
- (f) Answers should be written in ink.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**PART A**  
**FORENSIC MEDICINE**

**COMPULSORY**

**QUESTION 1**

**Answer both (a) and (b).**

- (a) Outline the medico-legal significance of the following –
- (i) True and False Bruises;
  - (ii) Post-mortem abrasions;
  - (iii) Secondary impact injuries in motor vehicle accidents;
  - (iv) Hesitation wounds; and
  - (v) Ricochet bullets.
- (b) What do you understand by “Exhumation” of dead bodies? Enumerate the indications for such exercises. How would you distinguish ante-mortem from post-mortem wounds?

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**PART B**  
**EVIDENCE**

**QUESTION 2**

**Answer both (a) and (b).**

- (a) Distinguish between ‘legal advice’ and ‘litigation’ privilege.

- (b) Jabez was badly injured in an accident involving the passenger bus in which he was travelling and another vehicle. On his behalf, Joe Jumpy, an attorney-at-law with a substantial practice in personal injury matters, wrote to the owner of the bus claiming damages for negligence on the part of the driver of the bus.

In response to this letter, Joe received a letter from attorneys representing Bus-Speed Ltd, the owner of the bus, indicating, "entirely without prejudice", that their client wished to negotiate an out of court settlement of Jabez's claim and inviting submission of full details of the claim. As a result, Jabez, anxious to avoid the long wait which he understood to be inevitable if the matter were to go to court, instructed Joe to negotiate a settlement of his claim as quickly as possible.

Joe accordingly proceeded to write to Bus-Speed Ltd's attorneys, also under "without prejudice" cover, conveying Jabez's instructions. After further correspondence on both sides, Bus-Speed Ltd's attorneys finally wrote to Joe to say that their advice to their client was that the bus driver was only 50% per cent to be blamed for the accident and that they would therefore be prepared to continue the negotiations on that basis only.

After further correspondence between the two sets of attorneys, the negotiations broke down and Joe issued proceedings against Bus-Speed Ltd for damages for negligence in the operation of the bus at the relevant time. Joe referred in the particulars/statement of claim to the 'without prejudice' correspondence and indicated that, if the claim was not settled, his client would not hesitate to use that evidence at the trial.

Joe seeks your opinion on whether this course of action is permissible.

Advise Joe.

### **QUESTION 3**

**Answer both (a) and (b).**

- (a) At Cope's trial for murder, none of the prosecution witnesses was specifically examined with a view to establishing that Cope's act had been unprovoked; nor had Cope himself given any evidence or called any witness to establish provocation. Cope was convicted and his new counsel proposes to argue his appeal on the ground that *"in every criminal trial the prosecution must prove each element of the crime charged. ...This involves negating all factors which, if found to exist, would lessen or remove the accused's criminal liability"*.

You are briefed to argue the appeal on behalf of the Crown; how would you meet this submission?

- (b) At Donatello's trial for murder, he gave evidence that suggested that he had acted in self defence and called a witness in support of his account of the incident. In his summing up, the trial judge told the jury that *"Donatello having raised this defence of self defence, it is for him and his witness to prove this to you on a balance of probabilities"*. Donatello was convicted and seeks your advice on his chances of a successful appeal.

Advise Donatello.

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### **QUESTION 4**

**Answer both (a) and (b).**

- (a) During his examination-in-chief at a criminal trial, Peter, a witness for the prosecution, omits an important detail from his evidence. In re-examination, he

is invited by counsel for the prosecution to refresh his memory from his police statement, although he had given no indication of an inability to recall any aspect of the matters upon which he had testified. Counsel for the defence objects, on the basis that the witness, not having indicated in examination-in-chief that his recollection was deficient in any respect, cannot be permitted to refresh his memory from his statement.

Advise counsel for the prosecution on how he should respond to this submission.

- (b) John, a witness in a criminal case, is allowed by the judge while giving evidence to refresh his memory from his statement prepared roughly a month after the events in question and despite the fact that he had refreshed his memory from the statement prior to giving evidence. The accused is convicted and on appeal his attorney proposes to argue that:
- (i) John ought not to have been allowed to refresh his memory while giving evidence from a non-contemporaneous document; and
  - (ii) in any event, even if the trial judge had a discretion to allow John to refresh his memory from a non-contemporaneous document, he ought not to have allowed it in this case because he, John, had already done so out of court prior to giving evidence.

Are these good grounds of appeal? Give reasons.

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## QUESTION 5

Albert was suspected of murder. He was arrested and detained for questioning for a period in excess of 24 hours. The police failed to provide him with refreshments or to allow him any period of rest during the questioning, which was carried on, it seemed to him, by at least two 'shifts' of policemen who always appeared to him to be alert and fresh in appearance. Albert was also not allowed to speak to an attorney, despite his request that he be allowed to do so. Albert then made a full confession.

At his subsequent trial for murder, Albert's attorney sought in the presence of the jury to have the confession excluded from evidence, on the grounds that it had been obtained in breach of the Judges' Rules and also by oppression. The attorney representing the prosecution contended otherwise, stating that although there may have been breaches of the Judges' Rules, the confession had been voluntarily given and any such breaches were not likely to have rendered the confession unreliable. The submissions of both the defence and the prosecution were made in the presence of the jury. The trial judge agreed with counsel for the prosecution and admitted the confession in evidence.

In summing up the case to the jury, the trial judge told them that they should not concern themselves with "...all the talk by the defence about oppression and all of that", as that was a matter for him and he had dealt with that when he decided that the confession was admissible in evidence. The jury in due course convicted Albert.

Advise Albert as to his chances of a successful appeal.

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## QUESTION 6

Geronimo is charged with the shooting murder of his wife at their home, shortly after midnight. She died while in surgery at the hospital. His defence is that his licensed firearm went off accidentally causing her death from a single gunshot injury.

Advise on the admissibility of the following items of evidence sought to be tendered by the prosecution:

- (i) Evidence from a telephone operator that, minutes before the shot was fired, a woman called her from a number, listed as the home of the couple, begging her to call the police. Even before the contents of this alleged conversation can be given, Geronimo's counsel has already suggested to the telephone operator that there was no call made from that number at any time after 11 p.m. that night.
  
  - (ii) A written statement from Geronimo's neighbour to the police to the effect that at about midnight he heard Geronimo and his wife quarrelling, and that shortly before he heard a gunshot he heard Geronimo threaten to kill his wife. Geronimo's neighbour has since moved from the neighbourhood and despite their best efforts the police have been unable to locate him. It is in these circumstances that the prosecution will seek to tender the written statement of Geronimo's neighbour to the police.
  
  - (iii) Evidence from a doctor at the hospital that, while preparing the wife for surgery, about an hour after the shooting, she declared, "That mad, jealous husband of mine has killed me off at last".
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## QUESTION 7

Answer both (a) and (b).

- (a) Malthus is charged with raping Elspeth, a young woman of eighteen years. Other than Elspeth herself, the prosecution intends to call Penelope, Elspeth's mother, to give evidence that on the day in question Elspeth came home from school in a distressed condition and complained that Malthus had raped her. Malthus denies the charge to the investigating officer, originally claiming to have been at work at the relevant time but subsequently admitting that he had lied about his whereabouts and that he had gone for a walk with Elspeth, during which they had held hands, but that he did not rape her. The prosecution also intends to call the investigating officer.

You appear for the prosecution. What issues do you identify and how will you proceed?

- (b) Malthus is convicted and he seeks your advice on an appeal on the following direction to the jury -

*“The charge against the accused, members of the jury is for raping the young woman named Elspeth. Much has been said by defence counsel about the absence of corroboration. However, you may find corroboration of Elspeth's evidence in any evidence that supports her story, once that supporting evidence does not come from her mouth. For example, if you believe Penelope's evidence that her daughter Elspeth complained to her that she was raped you may regard this as corroboration. You may also find corroboration in the statement of the accused to the investigating officer wherein he admitted being with Elspeth and holding her hand.”*

Advise Malthus.



## QUESTION 8

Speedy is charged with three counts of indecent assault involving three schoolboys each of about ten years of age. The offences are alleged to have been committed on the 5<sup>th</sup>, 6<sup>th</sup>, and 21<sup>st</sup> April last year respectively. On each occasion, Speedy is alleged to have gone to the boys' school, accosted each one of them in the schoolyard and represented to him - falsely - that the boy's parents had sent Speedy to take him home. On each occasion, Speedy is alleged to have encouraged each boy to accompany him to the Public Gardens before going home and the offences are all said to have been committed there. By way of defence to each count, Speedy pleads mistaken identity and sets up an alibi.

Advise –

- (i) on the proper ruling where, at his trial, Speedy's counsel moves to sever the indictment on the ground that the evidence of each boy is inadmissible on the counts in respect of the others; and
  - (ii) on the issue of identification generally, what special directions to the jury are required, if any.
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