

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2011

EVIDENCE & FORENSIC MEDICINE

(FRIDAY, MAY 20, 2011)

**Instructions to Students**

- (a) Time: **3 ½ hours**
- (b) **QUESTION ONE** and **FOUR** others.

**Answer Q**

- (b) Answer **question 1 on a separate answer booklet provided.**
- (c) 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.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) 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:
- a. Incised looking lacerated wounds
  - b. Patterned injuries
  - c. Defensive injuries
  - d. Primary impact injuries in motor vehicle accidents
  - e. Tandem bullets
- (b) State the various aims and objectives of Postmortem examinations. What are **postmortem artifacts**?

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**PART B**  
**EVIDENCE**

**QUESTION 2**

Joe Onesta is a small manufacturer of chocolate products, specialising in dark chocolate, the health benefits of which have in recent times been the topic of much publicity. In 2009, he launched a new line of after dinner chocolate sweets, under the name “Nesta’s

Dark Surprises". The product has proved to be a huge success on the local and regional market and has recently begun to attract international attention.

It has also come to the attention of Nesclear Inc., the well established multinational conglomerate, manufacturers of dairy and chocolate products for over a century. Nesclear Inc. has marketed its own line of chocolate sweets, under the name "Dark Dreams, by Nesclear", for at least 10 years and has in fact registered that name as a trade name in several CARICOM countries, including your own.

As a result of a complaint by Nesclear Inc., a criminal prosecution has been brought against Mr. Onesta, pursuant to the Trade Names Violation Act, charging him with unauthorised use of a registered trade name, contrary to section 92 (1) of the Act. Section 92 (1) of the Act provides:

"Any person who uses a registered trade name without the consent of the registered owner is guilty of an offence unless the defendant believed on reasonable grounds that his use of the offending trade name did not infringe any trade name registered under the Act".

Mr. Onesta has been advised that at the trial it will be for him to prove beyond reasonable doubt that he believed on reasonable grounds that "Nesta's Dark Surprises" did not infringe a previously registered trade name. He is outraged by this advice, protesting that there are no words in section 92 (1) of the Act imposing such a burden on him and he always thought that it was a fundamental principle of the Constitution that a man is presumed innocent until proven guilty. As a result, he seeks a second opinion from you.

Advise Mr. Onesta.

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### **QUESTION 3**

John, a former policeman, is charged for the murder of his wife and the trial of this charge is pending.

The prosecution alleges that John's wife left him because of his abusive behaviour and rejected his overtures to resume the relationship. The prosecution further alleges that in a fit of rage John awaited her arrival at her new place of residence, and when the car drove up he shot and killed her.

The prosecution proposes to rely on the evidence of the couple's six year old son, Ben, who was in the car at the time but had crouched low in the back seat to avoid detection.

Advise –

- (i) whether the couple's child, Ben, can give any form of evidence. If so, discuss any procedure necessary to determine this issue; and
  - (ii) whether any corroboration/caution requirements apply and, if so, the nature of these requirements.
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### **QUESTION 4**

Lionel is charged for rape and his trial before a jury in the High/Supreme Court is pending.

The prosecution's case is that the complainant, Mary, and Lionel were friends but that Lionel had always pursued Mary for a sexual relationship. The prosecution alleges that on the last of several visits by her to Lionel's apartment he raped her.

Mary allegedly returned to her apartment that night, where she saw her roommate, Tina. Both agree on what transpired thereafter, namely, that Tina, noticing Mary's distressed facial expression, pressed her with questioning. Tina, who was also a friend of Lionel, questioned Mary by asking her repeatedly, "What did Lionel do to you!?" "Did he rape you!?" Mary responded by telling Tina that Lionel had raped her. Tina encouraged Mary to go to the police and both did so.

The prosecution also intends to call the investigating officer as a witness. He will testify that when he initially confronted Lionel he denied that Mary had visited him but later admitted that she did. He also said that on that visit they had consensual sex.

Advise –

- (i) whether the evidence of Mary and Tina as to the complaint by Mary to Tina is admissible, giving reasons; and
- (ii) whether the trial judge should give any special directions to the jury. If so, indicate the nature of these directions.

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### **QUESTION 5**

Davinia is charged with murder of a gas station owner during the robbery of a gas station. The evidence for the prosecution is that she was the only woman in a group of

four persons who held up the two gas station attendants who were at work at 10.30 p.m., as they were tallying up the cash, with a view to closing for the night.

Davinia is identified at the trial by one of the attendants, who had also previously identified her at an identification parade. This attendant tells the jury that, while Davinia was not known to him before the night in question, he “could never forget her as she is the one who levelled the ‘nine’ at us, while the others grabbed up the cash”. The ‘nine’ is the popular ‘street’ name for the powerful 9 millimetre pistol.

The other attendant did not attend the identification parade due to illness, but she was called to give evidence at the trial and also identified Davinia, who she had never seen before the night of the murder, as “the lady with the big gun”.

Both witnesses testified that this was without a doubt the most frightening experience which they had had in their lives, but insisted that they were able to identify Davinia. They said that although they had actually been able to observe her for “no more than a minute or two”, the lighting inside the gas station had been excellent. They said they had had a clear view of her profile, as she stood at the door to the station watching the traffic passing on the road outside and keeping watch on them, while her colleagues scooped up the money from behind the counter. It appears from her attorney’s cross examination of the prosecution’s witnesses that Davinia’s defence is that she has been mistakenly identified, in that on the night of the murder she was at home alone with her ailing mother, who has in fact since died.

You have been doing your in-service training in the criminal High/Supreme court and, at the close of the prosecution’s case, you are asked by the trial judge to assist him by preparing a note of:

- (i) the matters he should take into account in considering the no case submission that Davinia's counsel has indicated that he will make when court resumes the following morning; and
- (ii) the directions which he will be required to give to the jury on the subject of identification, in the event that the no case submission does not succeed.

The judge has also asked you to point him to the authorities upon which your note is based.

Advise the judge.

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### **QUESTION 6**

Roger and Gary are brothers charged jointly for the importation of and dealing in cocaine.

The prosecution alleges that both men operated a small furniture company called Fine Furniture Ltd. The prosecution further alleges that the company, which had no employees except the brothers, was used as a front to import furniture from abroad with cocaine stuffed in its upholstery. Thereafter, the brothers would distribute the cocaine to several buyers from the premises.

Both brothers were arrested and charged when members of the Narcotics Squad, armed with a search warrant, raided the company's premises. Both have pleaded not guilty.

The prosecution wishes to adduce the following items of evidence at trial.

- (a) Evidence from the investigating officer as to several telephone calls to the premises which he intercepted immediately after the raid and in the absence of the accused. The officer will give evidence that the callers were placing orders for cocaine.
- (b) A sheet of paper found in an open safe in an office on the premises occupied by both brothers. The paper indicated in handwriting, authorship unknown, names of several persons and quantities of an unknown substance expressed in grammes “delivered” to each. A small quantity of cocaine was also found in the safe.
- (c) The latest annual return filed by the company with the companies registry. The return was required to be filed by statute and was open to public inspection. The prosecution proposes to rely on this to prove that the brothers were sole shareholders and directors of Fine Furniture Ltd.

Advise on the admissibility of these items of evidence.

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### **QUESTION 7**

Andrew and Charles were jointly charged, tried, and convicted for murder in the Supreme Court/High Court before a jury. The prosecution’s case was that, during the course of a burglary at his home by both accused persons, the deceased was shot and killed.



At the trial both Andrew and Charles disputed the admissibility of written statements after caution which each had allegedly given to the police. In these circumstances the trial judge held a *voir dire* in the absence of the jury to determine the admissibility of each statement.

Charles, on the *voir dire*, testified that he gave his statement because the senior policeman who wrote it had promised him bail were he to confess. This version was challenged by the prosecution.

At the conclusion of the *voir dire* the trial judge ruled that Andrew's statement was inadmissible but Charles' was admissible. Consequently, on the return of the jury, only Charles' statement was admitted into evidence in the presence of the jury. Charles' attorney-at-law, however, cross-examined the senior policeman in the presence of the jury and in the process put Charles' version to him that it was obtained by a promise of bail.

Both accused men gave evidence after the close of the prosecution's case. Andrew in his evidence sought to incriminate Charles as the gunman. Aspects of Andrew's evidence were inconsistent with his inadmissible statement. In these circumstances both the prosecuting attorney-at-law and Charles' attorney-at-law sought to cross-examine Andrew as to these inconsistencies. The trial judge ruled against this in both instances on the basis that "once a statement under caution is ruled inadmissible it cannot and should not be referred to in any circumstances".

At the conclusion of the trial, the trial judge in his summing up to the jury said the following:

"Ladies and gentlemen of the jury you have heard the contents of Charles' caution statement read to you and you may inspect it in the jury

room. He alleges that he gave it because he was - my words – “induced” to do so by an offer of bail. If that were the case, the caution statement ought not to be admitted into evidence. However, I had a hearing in your absence and rejected the version of this by the accused and hence it was admitted into evidence before you. That, however, is not the end of the matter. It is up to you as members of the jury to assess the truth of the caution statement and whether it was induced by an offer of bail. If you are sure the caution statement is true then you can and should rely on it even if you believe it was obtained by an inducement, namely the promise of bail.”

Charles now wishes to appeal his conviction.

Advise, giving reasons, whether he has any grounds of appeal in respect of –

- (i) the trial judge’s ruling as to cross-examination on Andrew’s inadmissible statement; and
- (ii) the aspect of trial judge’s summing up to the jury referred to above.

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### **QUESTION 8**

Felipe is charged with rape. The complainant is Inga, a lady who has been known to him for many years as his sister’s best friend. The case for the prosecution is that, on the evening of April 11, 2010, Felipe had been asked by his sister to take Inga home from a family gathering and that when they got to her apartment he had stopped, at her invitation, for a drink. Inga alleges that, while there, Felipe forced her to have sexual

intercourse with him without her consent. When Felipe was arrested and charged by the police he remained silent.

Felipe's defence is that he and Inga had always had a "thing" for each other and that the sexual act had taken place with her consent and enthusiastic participation. During the course of giving sworn evidence in his defence, Felipe tells the jury, in answer to his counsel, that he has never been in trouble with the police before. Further, he is the chairman of the 'Young Turks', the youth arm of one of the major political parties, which seeks to promote progressive values of 'clean living' in the society, as an antidote to the widespread corruption which, it is said, has overtaken the country.

Felipe also calls three witnesses, two of them aunts of his, who all speak in glowing terms about him, one of them describing him as "a role model for these desperate times".

In summing up the case to the jury, the trial judge refers to this evidence and merely tells them that "good character as such has never been a defence, though it is a factor to which you can attach such weight as you may see fit, always bearing in mind that, for even the most hardened criminal, there has to be a first time".

Felipe is convicted and seeks your advice on the prospects of a successful appeal.

- (a) Advise Felipe.
- (b) Would it make a difference to your answer in (a) above if Felipe, instead of giving sworn evidence, had elected to remain silent but still called his aunts who gave evidence as indicated. Give reasons.
- (c) Assume that Felipe not only remained silent but also called no witnesses. He however gave a pre-trial oral statement to the arresting policeman when he was

confronted by him with the allegation of rape. Felipe readily admitted to the policeman that he had sex with Inga but he insisted that it was consensual. Assume further that the arresting policeman testifies to this and to the fact that Felipe has never been charged or convicted of an offence. What would your answer be in these circumstances?

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