

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2010

EVIDENCE & FORENSIC MEDICINE

(FRIDAY, MAY 21, 2010)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer QUESTION ONE 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**

- (a) Define injury and classify injuries.
  - (b) What is the nature of injuries caused by an iron rod?
  - (c) Describe the entrance wound of a gunshot injury.
  - (d) What is the medico-legal importance of entrance wounds?
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**PART B**  
**EVIDENCE**

**QUESTION 2**

- (a) Section 11 of a statute dealing with offensive weapons in your jurisdiction provides as follows –

*“Any person who without lawful authority or reasonable excuse is found in possession in any public place of any offensive weapon as hereinbefore defined shall be guilty of an offence.”*

Your client, who is a small farmer, was found in possession of a machete (which conforms to the statutory definition of an offensive weapon) at a political meeting being addressed by the Leader of the Opposition in the town square and was charged with an offence under section 11. His instructions to you are that he had actually been on his way to his vegetable plot on the outskirts of the town when his attention was attracted by the large gathering in the square. He had merely stopped for a few minutes to observe and to hear what was the latest promise being made in exchange for the people's support in the upcoming general elections.

Advise on the burden of proof on a prosecution under section 11.

- (b) On Warren's trial on a charge of murder, his defence is that he acted in lawful self-defence. In the course of his summing up to the jury, the trial judge directs the jury in this way –

*"The force used by the accused must not have been by way of revenge or spite, and it is for the prosecution – sorry, strike that - it is for the defence to satisfy you that the accused honestly believed that the force used by him was necessary to prevent or resist the attack which he says that the deceased was about to launch upon him. But apart from that, it is generally for the prosecution to prove the case against the accused and what you must consider is whether, just as you would do if you had to make an important decision in your own life, to buy a house, for instance, you are comfortably satisfied that a finding of guilt against the accused is the correct one."*

Warren is convicted and seeks your advice as to his chances on appeal.

Advise Warren.

### **QUESTION 3**

Japheth Jonas is charged with the murder of Mrs Austin, an elderly widow who lived with her grand-daughter, Geneva, in a quiet residential area of the capital city. The case for the prosecution is that at about 7:00 p.m. on the evening in question, as Mrs Austin was returning home on foot from the small grocery store within walking distance of her home, she was set upon by her neighbour's son, Japheth, who held her up at knifepoint, took away her purse and her small bag of groceries and, when she began to scream "murder, help, thief!!", stabbed her in her abdomen before running away. Geneva, who was sitting on the veranda at home awaiting her grandmother's return, rushed to her assistance, following the sound of the screams but, by the time she got to her, found her grandmother lying on the ground bleeding profusely. She was, however, conscious and, in answer to Geneva's question, "Grandma, who did this to you?", Mrs Austin replied quite clearly, "Don't you see that it is Mr Jonas' thieving son who has killed off your grandmother!". But within minutes, even as Geneva tried frantically to call the police on her cell phone, Mrs Austin died in her arms right there in the street.

At Japheth's trial, in addition to Geneva (aspects of whose evidence were only allowed over strenuous objection from the defence), the prosecution called as a witness John, a university student who lived across the road from Japheth's father's house, who testified that he was actually walking home behind Mrs Austin, when he saw Japheth, who he knew before, emerge suddenly from a vacant lot, attack her with a knife and then run back through the vacant lot to the adjoining street. According to John, the whole incident took no more than 15 seconds, but he was able to see Japheth clearly, because he was "close enough" to Mrs Austin (in cross-examination he said that he was "about two chains" behind her), and because "it was only just turning dark", so much so that the street lights had not yet come on. Japheth, in a brief unsworn statement from the dock, denied the charge, insisting that he had been mistakenly identified by John, as

he had in fact been watching a football match at the national stadium at the material time.

At the close of the case for the defence, the judge, who is due to begin her summing-up to the jury the following morning, asks you (as her judicial clerk) for advice on what directions she should give about John's evidence and on the value of Japheth's unsworn statement. She also has serious misgivings about having allowed Geneva to give evidence of what she had heard her grandmother say immediately after the attack while she was in her arms and wonders whether she made the right decision.

Advise the judge.

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#### **QUESTION 4**

Joey is charged with raping Earline, who is a co-worker of his. He does not deny having had sexual intercourse with Earline, but insists that it was with her consent. Her evidence is that on the night in question he had offered her a lift home from the fast food restaurant where they were both employed, that when they got to her apartment she had invited him in for a drink and that he had forced himself upon her without her consent.

The prosecution's only witness apart from Earline is the police officer who investigated the matter. Although Earline had been medically examined on the day following the incident, the record of the doctor's findings had been mislaid at the police rape unit and the doctor herself had migrated and was not available to give evidence. Joey gives evidence on his own behalf setting up his defence of consent and asserts that he has

never been in trouble with the police before. He also calls as witnesses the female principal of the co-educational high school which he had attended, who spoke glowingly of his “impeccable” reputation for gentlemanly conduct while he was at school, as well as a former girlfriend of his, who described him as “the complete ladies’ gentleman” and asserted that she was shocked when she was told that he had been accused of rape.

In his summing-up to the jury, the trial judge tells them that (a) they are not to be concerned about the fact that Earline’s evidence is unsupported by any other evidence, as there is nothing in the law which requires this and (b) that they are to “pay no attention” to all the talk about what a good boy Joey was at school, since it is well known that people can change character and that he is sure that most criminals were very sweet babies. Joey is convicted and seeks your advice as to his chances on appeal.

Advise Joey. Would it make a difference to your advice if Joey, instead of giving sworn evidence, had made an unsworn statement from the dock?

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### **QUESTION 5**

- (a) Alonzo is charged with motor manslaughter. The officer on duty at the police station when the accident which resulted in death was reported was Mr Jackson Smythe, who at that time was a constable in the police force. He had visited the scene, observed the location of the two vehicles that were involved in the incident and made measurements and notes in his notebook of what he had observed. In addition, Mr Smythe, who had left the force shortly after that, had also given a formal statement to the investigating officer.

Advise whether and, if so, subject to what conditions, Mr Smythe may be allowed to refresh his memory from his notebook and/or his witness statement in each of the following circumstances -

- (i) before Alonzo's trial; and
  - (ii) while he is in the course of giving evidence from the witness box at the trial.
- (b) On the facts of (a) above, assuming Mr Smythe is permitted to refresh his memory from his notebook while he is in the witness box, to what extent can Alonzo's counsel call for and inspect the notebook and/or cross-examine him as to its contents? Does the notebook necessarily become an exhibit in the case?
- (c) Assume that when he is called to give his evidence, Mr Smythe states that he wishes to take an oath by "Jah, the ever mighty Rastafari", but that the trial judge refuses to allow him to do so, commenting that he is not surprised that Mr Smythe is no longer a member of the police force, as he must have been an embarrassment to his badge, the police force and his country. As counsel for the prosecution, you are then asked by the judge whether you have any comment to make.

How will you respond?

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## **QUESTION 6**

Georges and Gino were jointly charged with the murder of Woolman, whose body had been found tied up in a hotel room. The post mortem evidence established that he had been badly beaten and battered about the face before being strangled and that death

had occurred in the region of 9.30 p.m. on a Saturday evening. Acting on a tip, the police intercepted Georges and Gino in a room on a different floor of the same hotel at 3.00 a.m. the following morning and took them to police headquarters, where they were each interrogated for about three hours before being placed together in a holding cell, in which there was no place to sit. At about 10.00 a.m., nothing further having been said to either of them by the police officers, Gino started to shout and make a lot of noise and, when the officer in charge arrived outside the cell, Gino announced to him that "I need to get out of here. Who can I make my statement to?" The officer made no response, but immediately took Gino to his office where, after two hours of further questioning, he made a detailed statement accepting responsibility for Woolman's death. However Gino insisted that Georges had really been the driving force behind the whole thing and was the one who had got him involved in the first place. At the trial, Gino objects to this statement going into evidence on the ground that it was not voluntary, in that it had been obtained by threats, improper promises and oppression.

Advise on the following -

- (a) the procedure to be followed upon this objection having been taken and the principles that the trial judge should apply in these circumstances;
- (b) assuming that Gino's statement is ruled admissible, what directions should the judge give to the jury as to how they should approach it?
- (c) assuming that the statement is ruled inadmissible, how should the judge respond to an application by the prosecution to admit as an exhibit a bloody hammer subsequently found in the hotel room in which Gino and Georges had been apprehended, as a result of information given to them by Gino during his interrogation by the police?



## **QUESTION 7**

- (a) Crashroft Construction Co Ltd (“Crashroft”) is a leading firm of building contractors, which has been represented for many years by Sealy, Davis & Co, prominent attorneys-at-law in the capital. Two years ago, Crashroft undertook the development of a condominium project in the tourist resort area, comprising of one, two and three bedroom luxury apartments. Sealy, Davis & Co acted as attorneys on the project from the very beginning, assisting with the application for planning permission, preparing various contracts and providing legal advice generally.

Upon completion of construction, Crashroft, pursuant to a specific clause in the contract with the purchasers, notified them of a 25% escalation charge in the original price, based on calculations done by its quantity surveyors. The majority of the purchasers, considering that with the passage of time and inflation the increases were probably justified, agreed to pay the additional amount, but a group of 10 of them, led by a retired judge and her husband, decided to challenge Crashroft’s invocation of the escalation clause in the circumstances and commenced litigation accordingly. The claimants now seek specific disclosure from Crashroft of the following documents, which are admittedly in the custody of Sealy, Davis & Co -

- (i) Crashroft’s original instructions to Sealy, Davis & Co regarding the project, together with any advice provided by the latter to Crashroft with regard to the best way to protect against escalation;
- (ii) the quantity surveyors’ report(s) upon which the original contract prices of the units had been based, along with the reports upon which the escalation charges had been imposed; and
- (iii) a further report from the quantity surveyors, which had been commissioned on behalf of Crashroft by Sealy, Davis & Co after the

escalation charge had been imposed and the claimants had given notice of their intention to sue.

Advise Sealy, Davis & Co on the position which they should take on the application for disclosure in relation to each of these documents.

- (b) At Paschal's trial for manslaughter, Edwina, his counsel, in cross-examining the main witness for the prosecution, suggests to him that it is not true that he has known Paschal for over 10 years, as he has testified, but that he has in fact only known him for no more than 10 months. At this point, Paschal asks a police officer to pass a note to Edwina, which reads as follows -

*"You've got it all wrong: he has known me for more than 10 years – I wouldn't pursue that line anymore if I were you".*

Having read the note, Edwina immediately moves on to something else, but the judge, who has been paying keen attention and saw the passing of the note, now demands to see it, observing that he is in charge of the court and entitled to understand fully all that is going on. Edwina's counsel requests and is given a brief adjournment, during which she frantically places a call to you, her senior partner, seeking your advice as to what she should do in these circumstances.

Advise Edwina.

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### **QUESTION 8**

- (a) Franco wishes to sue the Ever Hopeful Maternity Hospital for negligence as a result of the death of his beloved wife arising from complications after having undergone a delivery by Caesarean section at the hospital. He tells you that, in

addition to his wife's case, he knows of at least four other instances in the last year in which women have either died or become seriously ill after having undergone the same procedure at Ever Hopeful.

Advise Franco as to the admissibility of this evidence.

- (b) Samantha is charged with burglary of B2 Electronics Store, from which it is alleged that she stole 10 expensive Nikon digital cameras. A hidden video camera captured Samantha on film as she entered the store at about 10.00 p.m. using a special card which allowed her to bypass the security alarm system. She was wearing black tights, a black skirt, boots and surgical gloves and carrying a large handbag. The police have had reports of burglaries of three other electronics stores in the city from which expensive camera equipment was also stolen. Although there has been no direct identification of the burglar in each of these cases, there is some evidence that, shortly before each burglary, a woman of about the same age as Samantha was seen in the vicinity of the store in question also dressed in full black and carrying a bulky handbag. There is also evidence that the security system was somehow rendered inoperative in each of these other cases.

Advise the prosecution –

- (i) on the admissibility of the videotaped evidence on the charge of burglary of B2 Electronics; and
  - (ii) on the admissibility of evidence of the other three burglaries.
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