

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2005

EVIDENCE AND FORENSIC MEDICINE

(WEDNESDAY, MAY 25, 2005)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

FORENSIC MEDICINE

COMPULSORY

QUESTION 1

- (a) Discuss the use of body temperature of a corpse in determining time of death.
- (b) What are hesitation knife wounds?
- (c) Why are plucked as well as combed pubic hair submitted for laboratory analysis in suspected cases of rape-homicide?
- (d) A 45 year old businessman who is suspected by the police of heading a drug trafficking ring is reported missing by relatives. Three days later the burnt body of the businessman is discovered in the trunk of a burned-out car. Initial inspection reveals fractures of the skull, right humerus and left ulna. The hands and feet are noted to be tied with what appears to be rope. The forensic pathologist requests X-ray examination of the body.
 - (i) What do you think is the primary reason for the forensic pathologist requesting X-ray examination of the body?
 - (ii) Give two possible reasons for the fractures noted.
 - (iii) Explain how laboratory analysis of blood obtained at autopsy can be used to establish that the decedent was alive before the vehicle was set on fire.

PART B

EVIDENCE

QUESTION 2

- (a) John is charged for assault before a jury arising from an alleged gang beating of the victim. The incident happened at night and John's defence is an alibi.

Patrick, the sole eye witness for the prosecution, testified at the preliminary enquiry that he did not recognize John as one of the assailants. However, at John's trial he testifies that he recognized John, whom he had seen before, as an assailant.

John's attorney-at-law confronts Patrick with his contradictory statements and eventually Patrick admits that his statements are contradictory. He offers no explanation. There is no other significant evidence against John.

What course of action, if any, is open to John's attorney-at-law?

- (b) Assume that the case against John goes to the jury. The judge directs the jury on the contradiction in the following terms:
- "there may be an explanation for the opposing statements ... at a preliminary enquiry a witness is questioned by a prosecutor and it is possible for a witness to give an answer he does not intend to give, or he is mistaken as to what he intends to say or the answer may not sometimes be recorded accurately".
- (i) Advise on the propriety of the judge's direction.

(ii) Should the judge give the jury any special directions? Explain.

QUESTION 3

You are an officer in the Attorney General's Department in your territory.

He asks for your advice on proposed legislation seeking to impose a burden on the accused in relation to provocation.

The proposed legislation defines provocation and requires that "the proof thereof shall lie on the accused".

The constitution of your territory contains a presumption of innocence to the effect that "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty". There is also a proviso in this section in your constitution which provides that –

"nothing contained in or done under the authority of any law shall be held to be inconsistent with this section to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts."

The Attorney General seeks your advice on the nature of the burden the statute seeks to impose and whether it breaches the presumption of innocence in the constitution of your territory and, if so, the effect of this.

QUESTION 4

Roy and Tom are charged with possession of cocaine.

The prosecution's principal witness is Inspector Baddams who testifies that he stopped the vehicle in which both were travelling and found the cocaine in the trunk.

Roy's attorney-at-law cross-examines Inspector Baddams to establish that in a previous case, investigated by him, he admitted at that trial to tampering with evidence. Inspector Baddams denies this.

Roy's attorney-at-law seeks to call the magistrate who presided at the previous trial to prove the alleged admission. He contends that the evidence is admissible to show a tendency by Inspector Baddams to go to improper lengths to secure a conviction. The judge rules against calling the magistrate on the basis that this is a collateral issue and Inspector Baddams' denial should be treated as final.

Tom gives evidence in his defence and blames Roy for the cocaine find. Tom has two previous convictions for drug related offences.

- (a) Advise on the correctness of the judge's ruling as to calling the magistrate to give evidence concerning the previous trial.
- (b) What course of action, if any, is open to the prosecution and Roy's attorney-at-law in view of Tom's evidence against Roy?

QUESTION 5

- (a) Joe is charged for the gun robbery of a bank. His defence is an alibi.

A surveillance camera captures the robbery but the videotape was subsequently mislaid.

A short distance from the bank the police discovered an abandoned car matching the description of the getaway car. In it handwritten notes are found bearing the words "Joe Rules" and a gun with ink on it matching the ink on the notes.

The investigating policeman who saw the videotape (on the basis of which he identified Joe) and who recovered the gun and notes is called as a witness for prosecution. The defence objects to the evidence of what he saw on videotape as well as the notes, on the basis that they are hearsay.

Advise on the admissibility of these two items of evidence.

- (b) Roger is charged for murder. The victim was hospitalized for a short period before his death.

The investigating policeman at the trial testified that he went to the hospital to interview the victim of the incident. He testifies that, based on his questions to the victim as to the assailant, he obtained a warrant for the arrest of Roger and subsequently arrested and charged him for murder.

- (i) Roger is convicted and seeks your advice as to whether he has a ground of appeal. Advise him.

- (ii) Would your answer be different if at the time the victim spoke to the policeman he had an expectation of death and in those circumstances revealed Roger's name as his attacker?
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QUESTION 6

Robert is charged jointly on an indictment with Gary for a murder committed during the course of a burglary.

At their trial, the prosecutor attempts to tender into evidence a written confession by Robert to the police. Robert's attorney-at-law objects on the basis that the confession was obtained by force. After a *voir dire*, the judge rules the confession inadmissible.

The judge also rules inadmissible evidence of a find by the police of goods stolen from the burgled home. These goods were discovered at a hideout as a result of information contained in Robert's confession. Robert led them to the hideout after the alleged force by the police.

On the resumption of the main trial Robert gives evidence in his defence. The prosecution and Gary's attorney-at-law seek to cross examine Robert on inconsistencies between the confession and Robert's evidence so as to discredit him.

The judge rules against this proposed cross examination on the basis that it is impermissible because the confession was not admitted into evidence.

What principles govern the judge's rulings in relation to:

- (a) the admissibility of evidence in relation to the find of stolen goods; and
 - (b) the cross-examination of Robert on his inadmissible confession.
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QUESTION 7

Write brief notes explaining the essentials of any three of the following:

- (a) Privilege against self incrimination.
 - (b) Legal Advice privilege.
 - (c) Litigation privilege.
 - (d) Without Prejudice privilege.
 - (e) Public Interest/Immunity privilege.
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QUESTION 8

Juan, a university student, is charged for the rape of his fellow student, Mary.

It is alleged that the rape took place when he took Mary on a date. When first confronted by the police, Juan initially denied taking Mary on a date but then admitted doing so but contending that they had consensual sex.

At Juan's trial the prosecution propose to adduce evidence from two other university students who allege that Juan raped them on dates. In both cases Juan was tried and acquitted, his defence in both cases being consent.

Juan's attorney-at-law vigorously objects to the prosecution's attempt to adduce evidence of the past alleged rapes as his client was acquitted of these.

- (a) Should evidence concerning the alleged rape be admissible?
 - (b) What special directions, if any, should the judge give in relation to:
 - (i) Mary's evidence;
 - (ii) Juan's lie to the police?
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