

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2004**

**EVIDENCE AND FORENSIC MEDICINE**

**(WEDNESDAY, MAY 26, 2004)**

**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) What are the differences between a laceration and a cut?
- (b) What are shored exit gunshot wounds?
- (c) Jane Brown, a 30 year old woman, is found dead at the home of a male acquaintance with multiple abrasions, contusions and lacerations to her body. The pathologist's post mortem report listed manual strangulation as the cause of death. The male acquaintance was later arrested on suspicion of murder.
  - (i) What are the autopsy findings you expect the pathologist to give during his testimony in court to support manual strangulation as the cause of death?
  - (ii) The victim was investigated for possible rape. What samples were taken for laboratory investigations in order to:
    - (a) confirm the suspicion of rape;
    - (b) confirm the identity of the alleged perpetrator?
- (d) Comment on the use of stomach contents in estimating time of death.

## PART B

### LAW OF EVIDENCE

#### QUESTION 2

- (a) In a bid to protect its growing eco-tourism industry your territory passes environmental legislation including the Protection of Wildlife Act. That Act contains the following provision:

*“Any person who shoots or hunts a protected bird in a protected area as set out in Schedules 1 and 2 respectively, without a permit is guilty of an offence.”*

Schedules 1 and 2 of the Act set out the protected birds and areas respectively.

Robin is charged for this offence. He pleads not guilty.

Identify and explain with reference to this offence:

- (i) the facts in issue;
  - (ii) the burden of proof and standard of proof in relation to each fact in issue and the party, prosecution or defence, who is to bear each.
- (b) With reference to your answer of (a) above explain the term evidential burden and the nature of that burden, if any, to be borne by each party.

### QUESTION 3

- (a) Arising from the theft of a quantity of jewellery from a jewellery store, Jay and Tom are charged jointly on an indictment – Jay for larceny and Tom for receiving stolen goods, namely of jewellery allegedly stolen by Jay.

The prosecution offers no evidence against Tom in order to use him as a prosecution witness against Jay. The trial proceeds against Jay with Tom giving evidence for the prosecution.

In his summing up to the jury the trial judge, in reference to Tom directs them that:

*"You may well think that this witness has an interest to serve and in that event ladies and gentlemen of the jury you should be cautious in approaching his evidence and convicting Jay in the absence of supporting evidence."*

Jay is convicted and seeks your advice as to whether there is a basis to appeal. Advise him.

- (b) Assume on the facts mentioned above that part of the prosecution's case is that the police illegally searched Jay's house, recovered incriminating jewellery and the prosecution adduce evidence of this at trial.

Does Jay have a good ground of appeal as to this? Discuss.

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#### QUESTION 4

- (a) Peter is charged for the murder of his girlfriend and his defence is an alibi.

The deceased's former boyfriend, Bill, who was also investigated by the police admitted in a statement to the police that shortly before the murder he had threatened to kill her in a fit of jealousy. However, he denied any involvement in the murder. Bill was not charged.

Peter at this trial calls Bill as a witness for the defence. Bill in his evidence initially denied threatening the deceased. However, after Peter's attorney-at-law obtains leave to treat him as hostile and puts his police statement to him, he admits the substance of the statement to the police.

In reference to Bill's evidence the trial judge directs the jury that:

*"... bearing in mind the inconsistencies in the evidence of this witness, in particular his initial denial of any threat, his evidence is unreliable and valueless and you must disregard it."*

Peter is convicted and seeks your advice as to whether he has a good ground of appeal. Advise him.

- (b) With reference to the facts above, assume that Bill was charged for the murder of the deceased and acquitted prior to the charge against Peter. Peter's attorney-at-law learns of the fact that Bill had made an even more incriminating statement to his attorney-at-law Mr. Keepsecret. At Peter's trial, Peter's attorney-at-law wishes to subpoena Mr. Keepsecret to

produce the incriminating statement on the basis that it supports his client's innocence.

How should the trial judge approach this issue?

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### QUESTION 5

(a) Joe is charged for rape.

At his trial, the prosecution calls as an expert witness, Dr. Green, a forensic expert at the Government Forensic Laboratory.

Dr. Green testifies that on the basis of chemical analysis of blood found on Joe's trousers and the underwear of the victim, that the blood is the victim's blood in both instances. The chemical analysis was done by other members of staff in Joe's absence but those persons did not testify at the trial. Dr. Green also seeks to refer to expert literature in his field when giving his expert evidence.

- (i) Advise on the admissibility of Dr. Green's evidence.
- (ii) What principles are applicable to an expert's reference to expert literature in his field while giving evidence?

(b) Racquel and Stewart are involved in a motor vehicle collision. Arising from the collision, Racquel is injured and Stewart is charged for dangerous driving.

Stewart is tried and convicted of dangerous driving.

Racquel is now pursuing a civil suit for damages for negligence against Stewart and at the trial of the suit her attorney-at-law seeks to adduce evidence of Stewart's conviction.

Is evidence of Stewart's conviction admissible? Give reasons.

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### QUESTION 6

- (a) Maurice, Alfred and Gary are charged jointly for the robbery of a bank. The prosecution seeks to adduce in evidence documents found in the possession of Maurice by the police, the alleged ringleader behind the robbery.

One set of the documents comprises notes, in Maurice's handwriting, of the various meetings involving him, Alfred and Gary, setting out the plans for the robbery and the roles each agreed to play.

Maurice is also found in possession of a floor plan of the bank, not prepared by him and the authorship is unknown.

Advise on the admissibility of the notes in relation to Maurice, Alfred and Gary and the plan in relation to Maurice.

- (b) Assume on the facts above that Alfred gave a written confession to the police in which he admitted participation in the robbery but asserted that his participation was under duress from Maurice and Gary.

The prosecution seeks to adduce the confession without objection from Alfred's attorney-at-law. Maurice and Gary's attorneys-at-law contend that the confession should be edited to omit references to their clients.

How should the trial judge proceed? Should he give any special directions?

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### QUESTION 7

- (a) Phillip and David are charged jointly for assaulting a member of their community with whom it is alleged they had a dispute.

When they were confronted by the police separately they both responded with verbal statements. Phillip responded, "Yes I assaulted him, but it was in self-defence. He attacked me first." David responded, "This is a set up. I was never involved in any assault."

At their trial neither Phillip nor David gave evidence in their defence, electing instead to remain silent.

What is the evidential value, if any, of Phillip's pre-trial statement and David's pre-trial statement?

- (b) Assuming on the facts above that on the prosecution's case there is evidence that neither Phillip nor David have previous convictions and that they are of good character.

Discuss any special directions required to be given by the trial judge.



## QUESTION 8

- (a) Ralph is charged with murder on the basis of the identification evidence of Jill, an alleged eyewitness.

The allegations are that Ralph burst into a dimly lit nightclub where the deceased, a policeman, was having a drink. He immediately shot and killed the deceased and fled with his firearm.

Jill, who was present and did not know Ralph before, attended two identification parades. At the first parade Ralph was not in the lineup and she identified someone else as the gunman. At the second parade she identified Ralph as the gunman.

At Ralph's trial his attorney-at-law cross-examines Jill as to the first parade, but Jill denies attending any parade other than the second parade at which she identified Ralph. Ralph's attorney-at-law seeks to adduce evidence of Jill's identification at the first parade but the trial judge rules against this on the basis that it is a collateral issue.

Advise on the merits of the judge's ruling.

- (b) Assume on the facts above that the trial judge gave a "Turnbull warning" but failed to direct the jury that an honest witness may be a mistaken witness. Ralph was convicted.

Describe the contents of a "Turnbull warning" and discuss whether the omission referred to above provides a good ground of appeal.