

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2002

EVIDENCE AND FORENSIC MEDICINE
(WEDNESDAY, MAY 22, 2002)

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) Evidence given by a pathologist in a murder trial, described the wound noted on the right anterior chest of the deceased as large, round and penetrating, 4 cm. in diameter. On probing the wound, several lead pellets, a wadding and plastic piston were recovered and handed to the police for future reference.

The defence argued that the accused man could not have shot the deceased based on the pathologist's report because when arrested shortly after the incident, he had a .38 cartridge revolver. This fact was supported by witnesses who described the weapon.

- What type of weapon caused the injury described by the Pathologist?
 - Based on your response, does this support the defence's argument? Elaborate.
- (b) Substance abuse is not only a medico legal problem, but in general a community and public health concern. Make the correct association of the following drugs with the given answers -

DRUGS

Amphetamine
Cocaine
Heroin
Marijuana
Ethyl Alcohol

ANSWERS

Causes most overdose deaths
Treatment of Glaucoma, Asthma
"Pep Pills"
Also used as an Anaesthetic
Causes cirrhosis of the liver

- (c) The Forensic Laboratory Reports issued for both rape and a carnal abuse victims, show positive findings for Spermatozoa, Acid Phosphatase, Gonococcus and Red Blood Cells. Is this convincing evidence in both cases that the offence took place? Elaborate.
- (d) Can the "Burial Order" document issued by the police be legally utilized as a replacement for the "Death Certificate"? Elaborate.

PART B

LAW OF EVIDENCE

QUESTION 2

- (a) John is on trial for murder. The sole eyewitness is Peter who did not know John before but had seen him previously in the community where the murder was committed.

At the trial Peter testifies that while walking home one night he saw John emerge from bushes, some seventy metres away, shoot the victim and flee from the scene. The incident lasted approximately five seconds. Peter subsequently identified John on an identification parade.

Peter in his statement to the police had previously said that he did not recognize the assailant and admits this, without explanation, in cross-examination.

What course of action is open to John's defence attorney at the close of the prosecution's case? Give reasons for your answer.

- (b) Jane, an attorney-at-law who specialized in conveyancing, has been disbarred for misuse of clients' funds. A former client of hers now sues her for fraudulent conversion of funds advanced to her to purchase property.

Advise on the standard of proof.

- (c) Susan alleges that she was injured when a car driven by Derek mounted a sidewalk and hit her there. Susan sues Derek for damages for her personal injuries. He, in response, files a defence denying negligence and alternatively, alleging contributory negligence on Susan's part in that she walked from the sidewalk, into the road and into his driving path.

What burden(s) does Derek have in relation to his allegation of contributory negligence? Give reasons for your advice.

QUESTION 3

- (a) Roy and Paul are charged jointly for conspiracy to defraud their employer. The prosecution proposes to use Roy as a witness against Paul because, in their view Paul had the bigger part to play in the fraud. Consequently, the prosecution accepts guilty pleas from Roy and now puts him forward as a prosecution witness.
- (i) Were there any other ways in which the prosecution could have used Roy as a prosecution witness? If so, identify these.
- (ii) Discuss whether or not Roy should be sentenced before he gives evidence for the prosecution against Paul.
- (b) Assume on the facts mentioned at (a) above that another employee, Jones, had previously been arrested and charged for his part in the conspiracy, and that a separate trial against him is pending.

The prosecution also wishes to use Jones, as a witness against Paul.

Discuss whether or not the prosecution should call Jones as a witness against Paul without first discontinuing or undertaking to discontinue the separate proceedings against Jones.

QUESTION 4

Andrew is charged for burglary, robbery and rape and is on trial for these offences.

The allegation against Andrew is that he broke and entered the house of the complainant and robbed and raped her. The complainant, who did not know Andrew before, identified him on an identification parade.

At his trial Andrew's attorney-at-law does not challenge that the incident occurred but raises an alibi defence.

The trial judge gives a "Turnbull" direction but no other special directions.

- (i) Should the trial judge have given other special directions? Give reasons for your answer.

 - (ii) Would your answer be different if Andrew in his defence gave evidence that he and the complainant had a very short affair, which she denies, and that she maliciously accused him of the rape? Give reasons for your answer.
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QUESTION 5

- (a) In a civil case for damages for personal injuries arising from a car accident the defendant's attorney-at-law proposes to use in his cross-examination of the plaintiff, a newspaper account of the accident. The plaintiff's attorney-at-law objects on the basis that the newspaper account,

admittedly inadmissible, cannot be used in any way in cross-examination. Can the document be used by the defendant's attorney-at-law in cross-examination and if so how?

- (b) In a criminal case the defence attorney-at-law cross-examines the investigating policeman to establish that he had threatened a possible defence witness to discourage him from testifying. The investigating policeman denies this and the defence now proposes to adduce evidence of the threat.

Is this permissible and if so, on what basis?

- (c) (i) At Roy's trial for murder the defence cross-examines the principal witness for the prosecution with a view to establishing an inconsistency between the witness' evidence and her statement to the police on a material point.

The witness' original handwritten statement to the police is lost and unavailable, but a typewritten copy bearing a signature purporting to be hers is on the prosecution's file. The witness denies her signature and the judge stops the defence from cross-examining her and the investigating policeman (to prove her signature) on the typewritten statement.

Is the trial judge correct in his ruling? Give reasons.

- (ii) What is the evidential value of a previous inconsistent statement when proven in both civil and criminal cases?

QUESTION 6

- (a) Stephen is charged for dealing in crack/cocaine which he allegedly sold from his night club. An undercover policeman who 'staked out' the premises proposes to give evidence that -
- (i) before entering the nightclub he made several enquiries from persons in the neighbourhood as to the availability of crack/cocaine and as a result of these enquiries he commenced investigations against Stephen;
 - (ii) while undercover in the nightclub he saw and heard several visitors, not called as witnesses, in a short space of time enquiring at the bar for crack/cocaine;
 - (iii) after searching Stephen's office, and in Stephen's absence, he found concealed a handwritten document, authorship unknown, setting out the names and addresses of 'customers' and various measurements in grams of a substance, not identified, under the heading 'quantities ordered' (assume that this kind of record keeping is common in the drug trade).

Advise on the admissibility of each of these items of evidence.

- (b) In a civil case concerning a disputed Will, the plaintiff calls a handwriting expert to prove a signature on the Will in question. In the course of his testimony the expert proposes to refer to and rely on several treatises not authored by him. The defendant's attorney-at-law objects to this as he contends that this would indirectly allow for the admission of hearsay

evidence. He also submits that in any event the Judge should not be allowed to read them.

Is there any merit to these objections? Give reasons.

QUESTION 7

- (a) David is on trial for a murder committed while he was on spring break in your jurisdiction. His girlfriend was found dead in his hotel room, along with a quantity of marijuana. When confronted he told the police, after caution, that he killed her but that they were both so 'stoned' from marijuana he didn't realize what he was doing when he killed her.

However, at the trial David, in giving evidence in his defence, denies that he and the victim were smoking and maintains that she attacked him and he killed her in self-defence.

- (i) Is the trial judge in these circumstances obliged to ask the jury to consider David's verbal statement to the police (which, if true, is a basis for a manslaughter verdict)? Give reasons for your answer.
- (ii) If the answer, to the above is yes, what directions should the judge give the jury as to the evidential value of David's 'mixed statement' to the police?
- (b) Gary and Kirk who are travelling abroad together are held at the airport with cocaine in their luggage.

After interviewing Gary the investigating police officer confronts Kirk and before cautioning him informs him that Gary accused him of secretly 'planting' the cocaine in Gary's luggage. Kirk remained silent.

Is Kirk's silence in these circumstances a possible basis for an inference of guilt against Kirk? Give reasons.

QUESTION 8

- (a) Nigel is suing his employer, X Co., for damages for personal injuries he received when a machine he was operating malfunctioned and crushed his fingers.

Advise X Co., and give reasons for your advice, whether the following written communication are subject to production and inspection on discovery -

- (i) A report from the company's safety engineers to X Co. prior to Nigel's accident indicating that the safety circuits in the machine were defective and in need of repair.
- (ii) A report from the safety engineers to X Co.'s attorneys-at-law on the cause of the accident itself in response to a request for this from X Co. after it was sued.
- (iii) Correspondence from X Co.'s attorneys-at-law to X Co. after the accident, advising that the suit be settled.

- (iv) Correspondence between X Co.'s attorneys-at-law and Nigel's attorneys-at-law, not headed up 'without prejudice', concerning settlement discussions between them which subsequently broke down.
- (b) At Ralph's criminal trial, Ralph passes a note to his counsel who is cross-examining a prosecution witness.

The note was carelessly left on the floor. The prosecution got hold of it and proposes to use it in the cross-examination of Ralph.

Is this permissible? Give reasons.
