

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2006**

EVIDENCE AND FORENSIC MEDICINE

(WEDNESDAY, MAY 24, 2006)

Instructions to Students

- (a) Time: **3½ 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) What are indeterminate range entry gunshot wounds?
- (b) What is meant by the term “patterned abrasions”?
- (c) The body of a 40 year-old man who has been missing for three days is found by fishermen at the Hellshire Beach. A postmortem is conducted the day following the discovery.
 - (i) What features will the Forensic Pathologist be looking for to confirm the suspicion of drowning?
 - (ii) Explain the statement – “Drowning is a diagnosis of exclusion”.
- (d) The charred body of a 35 year-old woman is recovered from a house with extensive fire-related damages. Discuss postmortem findings that can be used to establish the fact that the deceased was alive before the fire started.

PART B

EVIDENCE

QUESTION 2

In an effort to combat money laundering the Attorney General of your jurisdiction solicits draft legislation to address the movement of large sums of cash through the airport.

The draftsmen submit two alternative drafts in the following terms:

- (a) “Anyone found in possession of a sum exceeding US\$10,000 at the airport shall be deemed to be in unlawful possession thereof and shall be guilty of an offence unless he proves by way of satisfactory explanation the contrary.”
- (b) “Evidence that a person is found in possession of more than US\$10,000 at the airport shall constitute *prima facie* evidence of the offence of unlawful possession of property.”

Advise on the burden(s) to be borne by the prosecution and defence in relation to (a) and (b) above, the applicable standard of proof, if any, and the constitutional implications, if any.

QUESTION 3

- (a) Jim, who is separated from his wife Marlene, attends their son's soccer match with his girlfriend Jill.

Marlene, who is at the match, in a fit of rage assaults Jill. Marlene is charged for assault.

Advise on the competence and compellability of Jim as a witness for the prosecution.

Would your answer be different if Jill were suing Marlene for assault and sought to call Jim as a witness?

- (b) Assume on the facts of (a) above that the prosecution wish to call a 10 year old boy as a witness in the criminal case. Advise on the competence of the boy to give evidence. Assuming the boy can give evidence, are any special directions required?
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QUESTION 4

While on his way to a restaurant operated by him in a plaza, Gary intervenes in a dispute between a woman, Chaunika and a man, Simon over a parking space. Simon assaults Gary who now sues him for damages in the Supreme/High Court.

- (a) Gary's attorney-at-law proposes to cross-examine Chaunika, his own witness, when in examination-in-chief she denies having seen the assault

despite having said that she saw it previously in a written statement to Gary's attorney-at-law. Is this permissible and if so, to what extent?

- (b) Simon's attorney-at-law proposes to cross-examine Gary on differences between his evidence and his statement to Gary's attorney-at-law and omissions therefrom. Is this permissible and if so, in what circumstances?
 - (c) Simon's attorney-at-law also proposes to adduce evidence that Gary is not the registered proprietor of the restaurant but a mere lessee because Gary previously denied this in cross-examination. Is this permissible?
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QUESTION 5

Police raided a used car dealership operated by Raymond and Peter on the basis that it is a front for the sale of stolen vehicles. Raymond and Peter are charged jointly for receiving stolen goods, knowing them to have been stolen.

The prosecution proposes to adduce the following items of evidence despite the objections by the defence on the bases set out:

- (a) A statement to the police by the former Manager of the car dealership. The manager cannot now be found despite efforts by the police to do so. The prosecution contends that the statement is admissible under a local statute which permits its admission in these circumstances. The defence contends that the statement is inadmissible because it offends the constitutional right of an accused to confront witnesses against him in cross-examination.

- (b) Transfer documents from the Motor Vehicle Registry as to the stolen vehicles to prove their transfer. A Manager from the Registry will produce and give evidence of the transfers although not having personally dealt with the transfers in question. The defence contends that this evidence is hearsay.
- (c) A note by Raymond referring to stolen vehicles and indicating how he and Peter would divide the proceeds of the sales between them. The defence contends that the note is hearsay as against Peter.

Advise on the admissibility of these items of evidence.

QUESTION 6

- (a) Angelina is injured while parasailing at a water sports facility at a tourist resort in your jurisdiction.

The tourist resort obtains statements from its witnesses and also independent water safety experts in response to a suit filed by Angelina.

When the matter comes up for trial the resort contends that the witness statements and expert reports are privileged. Angelina's attorneys-at-law contend that they are entitled to be served with both.

- (i) Advise on the merits of both positions, and whether the CPR provisions affect your advice in any way.

- (ii) Do these provisions affect the form and content of witness statements and expert reports? If so, summarize how.
 - (b) Assuming that the tourist resort alleges that Angelina was negligent, advise on the nature of the burden(s) it bears as to this allegation and the standard of proof.
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QUESTION 7

Roger and Jack are charged for murder and the prosecution alleges that they gave confessions.

- (a)
 - (i) In the case of Roger, the prosecution contends that he gave an oral confession. Roger denies this and further contends that at about the time he allegedly gave it he was being beaten and ill-treated by the police. Is a *voir dire* necessary in these circumstances?
 - (ii) In the case of Jack, the prosecution contends that he gave a written confession. Jack contends that his rights under the constitution and the Judges' rules were breached. He contends that the confession should be excluded as of right on these bases. Is there merit in this proposition? Give reasons.
- (b) Assume on the facts of (a) above that the prosecution intends to call Barry, who transported Roger and Jack to the scene of the murder, as a witness. Barry was originally charged with the others but the prosecution offered no evidence against him in order to call him as a witness.

Are any special directions required in relation to Barry's evidence?

QUESTION 8

Tom and Jerry are jointly charged for burglary. Tom has no previous convictions but Jerry has three recent convictions for burglary.

- (a) Can the prosecution adduce evidence, as part of its case, of Jerry's previous offences of burglary?
 - (b) Is Tom entitled to any special directions having regard to the absence of convictions against him?
 - (c) Assuming that Jerry gives evidence in his defence are there any circumstances under which he can be cross-examined about his previous convictions?
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