

FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2007

EVIDENCE & FORENSIC MEDICINE

(FRIDAY, MAY 18, 2007)

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) The postmortem examination of stomach contents is no longer considered reliable in determining the time of death. Discuss why this is so.
- (b) Explain how the surface characteristics of a stab wound can aid investigators in determining that -
- (i) the knife used was single edged; and
 - (ii) stab wounds that resulted in death were self inflicted.
- (c) A 26 year old man is found dead at home. There is a gunshot wound to the chest and a gunshot wound to the back.
- (i) Discuss the characteristics of the wounds that would enable the pathologist to determine that direction of injury was front to back and not back to front.
 - (ii) What were the features of the entrance wound that enabled the forensic pathologist to determine that the range between victim and weapon used was **intermediate**?
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PART B
EVIDENCE

QUESTION 2

- (a) X Co. Ltd. chartered a ship from its owner, High Seas Shipping Ltd., to transport a load. Due to an explosion High Seas Shipping Ltd. was unable to load the ship. Consequently X Co. Ltd. sued High Seas Shipping Ltd. for breach of contract. High Seas Shipping Ltd. in response pleads in its defence that the contract was frustrated by the explosion. X Co. Ltd. in response alleges that in the event that the contract was thereby frustrated the explosion was caused by High Seas Shipping Ltd. and so was self-induced.

At trial X Co. Ltd's attorney-at-law submits that, High Seas Shipping Ltd. ought to bear the burden of proving that it was not at fault for the explosion.

- (i) Is there merit in this submission? Give reasons.
- (ii) Assuming that the matter is tried and at the conclusion of the trial the trial judge is unable to decide on the reason for the explosion, what ought to be the trial judge's decision on liability? Give reasons.
- (b) Compare and contrast on the one hand the admissibility of evidence and on the other the weight of evidence, indicating any differences in function between the role of judge and jury.

QUESTION 3

Your territory in an effort to combat the growing drug trade enlisted the assistance of the Drug Enforcement Agency (DEA) of the USA. In conjunction with the local police they targeted the “Sly Brothers”, involved in the drug trade.

The DEA enlisted an informant, John Turncoat, who is awaiting sentence in the USA on drug charges. He infiltrated the “Sly Brothers” operation and was employed by them.

Big John, a DEA agent posed as a drug ‘Kingpin’ and negotiated a deal with the “Sly Brothers” under which the brothers delivered a quantity of marijuana for export to a plane piloted by another undercover DEA agent.

The “Sly Brothers” are charged for dealing in marijuana and the matter comes up for trial. Their attorney-at-law objects to John Turncoat as a witness for the prosecution on the basis that he is incompetent to give evidence because of the pending sentence in the USA. The judge overrules the objection and hears the evidence of both John Turncoat and Big John. He convicts the “Sly Brothers” and gives himself no special directions before doing so.

Advise as to the merits, if any, on an appeal as to the following:

- (a) The trial judge’s ruling allowing John Turncoat to give evidence for the prosecution.

- (b) The failure of the trial judge to give himself special directions.

QUESTION 4

Mary who operates a private massage service alleges that Raymond, a client, raped her. Raymond is charged and on the basis of his not guilty plea the matter goes to trial. His defence is consent.

Advise on the admissibility of the following items of evidence –

- (a) Evidence for the prosecution from Mary that she visited and told her mother of the alleged rape on the night in question and evidence from her mother to the same effect. The prosecution proposes to adduce evidence not simply as to the fact of the complaint but also the terms of it.

- (b) Evidence from the defence that Mary -
 - (i) had made previous false complaints of rape against other clients;
and
 - (ii) was not a masseuse but in fact a prostitute.

The defence proposes to adduce this evidence if Mary denies these allegations in cross-examination.

QUESTION 5

- (a) Peter Smith is charged under a statute in your territory for illegally importing firearms without a permit. The statute provides that: “Any person who imports a firearm without a permit from the relevant authority is guilty of an offence.”

The prosecution alleges that Peter purchased the firearms on a specified date in Miami from a legitimate gun dealer “John Wayne’s Gun Dealership”.

When accosted by the police Peter denied travelling to Miami on the alleged date and denied knowledge of the gun dealership.

The prosecution proposes to call as a witness the Manager of the airline Reservations Department to produce a used ticket bearing the name Peter Smith on the date in question to Miami. The employee who handled the transaction cannot be found.

The police also searched Peter’s home and found a brochure on John Wayne’s Gun Dealership.

The defence proposes to object to these items of evidence as hearsay.

Advise on their admissibility.

- (b) Assuming instead that Peter Smith’s defence is that he did import the firearm but with the relevant permit, does the prosecution have the burden to prove the contrary? Give reasons.

QUESTION 6

- a) Tony and Joe are charged jointly for robbery. Tony has no previous convictions but Joe has two previous convictions for robbery.

The prosecution attempts to prove a confession allegedly made by Tony but on the *voir dire* the trial judge rules it inadmissible and so it is excluded from evidence.

Joe's defence is duress in that he alleges that Tony forced him on threat of death to participate in the robbery as part of his initiation into a gang. Accordingly when Tony gives evidence in his defence, Joe's attorney-at-law cross-examines him to this effect.

The prosecution and Joe's attorney-at-law also seek to cross-examine Tony as to inconsistencies between his evidence and his excluded confession. The trial judge stops this line of questioning on the basis that it is improper to cross-examine on an inadmissible confession.

- (i) Is the trial judge correct in his ruling? Give reasons.
 - (ii) Assuming that Joe also gives evidence in his defence, what course of action is open, if any, to the prosecution and Tony concerning Joe's previous convictions?
- (b) Barry, a child of 14 years, is charged for larceny/theft. While in custody at the police station, he is questioned by the police and his answers recorded without being given an opportunity to speak to his parents. At Barry's trial the prosecution seeks to put into evidence the record of the questions and answers. Barry's attorney-at-law objects on the basis that, his client was beaten and ill-treated and also that there was a breach of the Judge's rules.

The judge concludes on the *voir dire* that there was no beating or ill-treatment and that the statement was voluntary. He goes on to explain his ruling by saying, "Voluntariness being the sole criterion of admissibility the

breach of the Judge's Rules, if any, is irrelevant and that is the extent of the matter for my consideration at this stage".

Advise on the correctness of the Judge's approach.

QUESTION 7

- (a) BCC Bank is one of several banks to have collapsed in the financial sector of your territory.

The assignees of the deposit holders of BCC filed suit against the Central Bank of your territory for breach of its statutory duty in relation to the supervision of the bank.

The government appoints a Commission of Enquiry to enquire into the Central Bank's supervisory functions during the time of the collapse. The Enquiry's mandate is inquisitorial.

The Central Bank sets up an internal unit to handle all communications with its attorneys-at-law in relation to the enquiry. The attorneys-at-law were retained to advise the bank on the presentation of its response to the enquiry. Submissions were made to the enquiry pursuant to the advice of the attorneys-at-law for the bank.

The claimants now seek disclosure from the bank of communications between its internal unit and its attorneys-at-law.

The bank in response claims privilege on the following grounds:

- (i) Litigation privilege applies as the communications relate to litigation.
- (ii) Legal advice privilege applies.

Advise on the merits of each of these claims.

- (b) Assume that at the case management conference, the bank seeks to rely on an expert's report from an economist. Does the judge/master at the case management conference have jurisdiction to decide on its admissibility? If so, what obligation does the bank have in relation to the report under the Civil Procedure Rules?

QUESTION 8

- (a) Ian is charged for wounding David arising out of an altercation between them after a motorcar collision involving their vehicles. Ian punched David causing the wound.

On the basis of Ian's not guilty plea the matter goes to trial before a jury. The investigating policeman who visited the scene gives evidence for the prosecution that when confronted, Ian responded, "Officer, I punched him but it was because he attacked me first."

Ian's attorney-at-law cross-examines the officer and elicits from him that he, Ian, has no previous convictions.

Ian elects not to give evidence in his defence and calls no witnesses.

- (i) What directions, if any, should the trial judge give as to Ian's pre-trial statement? Give reasons.
 - (ii) What directions, if any, should the trial judge give with regard to the absence of convictions against Ian? Give reasons.
- (b) Assume instead on the facts above that Ian gives evidence concerning self defence.

What burden(s), if any, does he bear in relation to this?
