

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2008

EVIDENCE & FORENSIC MEDICINE

(FRIDAY, MAY 16, 2008)

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 how the Forensic Pathologist, by examining the characteristics of a gunshot wound inflicted by a rifled weapon, can determine the range of fire (distance between gun and victim).

- (b) The body of a 30 year old woman is found with multiple contusions to the neck. An autopsy is performed the following day.

Explain the following:

- (i) The Forensic Pathologist performed an anterior neck dissection.

 - (ii) The Forensic Pathologist submitted vitreous humour to the Forensic Laboratory.

 - (iii) The Forensic Pathologist submitted fingernail clippings to the Forensic Laboratory.
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- (c) The body of a 40 year old businessman is found in bushes close to his residence. An autopsy is performed the following day. Explain how injuries noted at the autopsy can be determined to have been caused by animal predation.

PART B

EVIDENCE

QUESTION 2

Joe and Tom were involved in a motorcar collision arising from which Tom in a rage allegedly punched Joe. Tom was charged for wounding with intent by the police.

At the trial before a jury, the prosecution called Joe to give evidence. Under cross-examination he admitted that immediately after the collision he was attempting to guide Tom by the elbow away from the scene to discuss the matter in the absence of his, Joe's wife. He did not wish his wife involved in their "man to man" argument.

The prosecution also called Jane, a bystander. She gave evidence, despite objection from Tom's attorney-at-law, that she saw Joe injured and went up to speak to him in Tom's absence. She said she then followed Tom who was walking away and in the absence of Joe confronted Tom by saying "That man said you punched him for no reason whatsoever!" She said that Tom shrugged his shoulders in response, "kissed his teeth" and walked away.

The trial is adjourned for the day and Tom's attorney-at-law seeks advice from you, his junior, as to whether:

- (i) the trial judge was correct in admitting Jane's evidence and if so, its evidential value;
- (ii) there is a basis for a no case submission and if so, on what ground(s); and

- (iii) if Tom elects to remain silent and call no witnesses whether the trial judge is obliged to direct the jury on self defence.
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QUESTION 3

- (a) Andrew and Christopher are charged with several offences relating to the theft of motorcars. In order to disguise the stolen cars, they switched engine and chassis numbers from written off vehicles to the stolen cars which were then sold from their used car dealership.

In order to prove the true identity of the stolen cars, the prosecution intends to adduce evidence of the manufacturer's records to show that the cylinder block numbers on the stolen cars correspond with the cars which were sold.

The workman who compiled the records has since died and so the prosecution propose to call the manager who was in charge of the records but who did not take part in the checking and entering of the cylinder block numbers into the records.

Andrew also gave a written confession to the police incriminating himself and Christopher.

Advise on the admissibility of the manager's evidence and the evidential value of Andrew's confession assuming the confession is properly admitted into evidence.

- (b) Assume on the facts at (a) above that there are also civil suits against the used car dealership by purchasers of the stolen vehicles, the cause of action being fraudulent misrepresentation.

Discuss the standard of proof applicable to such proceedings.

QUESTION 4

The principals of a failed investment scheme “Cash to Care” have filed suit against a government statutory agency which closed down its operations for a failure to comply with financial regulatory provisions.

At the case management conference the statutory agency applies to rely on the report of an auditor, Peter Scrupulous, as to the financial operations of “Cash to Care”. Peter Scrupulous’ audit on Cash to Care led to the closure of its operations. He had been employed by the agency to investigate its operations and had worked for the agency prior to that.

The attorneys-at-law for “Cash to Care” resist the inclusion of the report on the following bases:

- (i) there is an apparent bias on the part of Mr Scrupulous and this is contrary to the requirements of the Civil Procedure Rules;
- (ii) the expert report fails to comply with the requirements of Part 32 of the Civil Procedure Rules as to the statements to be set out at the end of expert reports and also the requirement to have attached instructions from the attorney-at-law to the expert.

The judge, after a hearing, excluded the expert's report.

The agency's attorney-at-law seeks your opinion on the following:

- (i) whether the report of Peter Scrupulous and the instructions to him from the agency's attorney-at-law were privileged and if so, how the Civil Procedure Rules have affected this; and
- (ii) whether there are grounds to appeal the exclusion of the report of Peter Scrupulous.

QUESTION 5

Frank and James are prosecution witnesses in a murder charge against Leslie. The allegations are that Leslie shot and killed the deceased on the street in broad daylight.

Both Frank and James gave statements to the police to the effect that they recognized Leslie, a resident of their gang ridden community, as the perpetrator. They had seen him several times before.

No identification parade was held because Leslie's photograph was published in the newspaper as a suspect and the police considered that this would invalidate a parade.

At the trial before a jury, Frank's statement was admitted into evidence by virtue of a statute allowing this if a witness cannot be found. James gave evidence and, despite objection, identified Leslie by way of dock identification.

Leslie gave evidence in support of his defence of alibi. The judge gave no special directions. Leslie was convicted and appealed.

On appeal the following issues arise:

- (i) Was the dock identification admissible?
 - (ii) Were any special directions required in relation to identification?
 - (iii) Were any special directions required in relation to Frank's statement?
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QUESTION 6

Tina, an exotic dancer, was hired to dance at a bachelor's party for Al, who was about to be married. She alleged that at the party two of the men, whom she knew before, William and Tony, lured her into a room and raped her. They were charged for rape.

Tina gave a statement to the police supporting her allegations but she did not mention William in that statement. Tony's wife, Mary, also gave a statement to the police to the effect that when Tony came home that night he said that he had done something bad and would pray for forgiveness. There is also a statement from the investigating officer to the effect that Tony initially denied knowing Tina but later admitted to this.

It is clear that the defence of William and Tony at the trial will be that Tina fabricated the allegations to extort money from them because she was cross-examined to this effect at the preliminary enquiry/committal proceedings.

You are asked to appear as junior counsel for the prosecution and to advise on the following:

- (i) The competence and compellability of Mary as a witness for the prosecution.
 - (ii) Whether the defence can cross-examine Tina as to her failure to mention William in her statement to the police.
 - (iii) Whether the trial judge should give special directions and if so the nature of these.
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QUESTION 7

Dale is charged with the robbery of a bank. The prosecution propose to rely on a witness, John, who saw Dale commit the offence. John allegedly transported Dale to the bank but is giving evidence for the prosecution because no evidence was offered against him by the prosecution for this purpose. The prosecution also intend to rely on a written confession by Dale, which Dale alleged was obtained from him in oppressive circumstances.

When the matter comes up for trial John is called by the prosecution but initially contends that he did not see who committed the offence. The prosecution applies to treat John as hostile. That application is granted. The prosecution proves John's previous inconsistent statement to the effect that Dale committed the offence. John then admits that the statement was true and explains his initial position on the basis that he was afraid.

In respect of Dale's alleged confession, the trial judge holds a *voir dire* in the absence of Dale and rules it admissible. Prior to summing up, the trial judge invites submissions from the attorneys-at-law for the prosecution and defence on whether any special directions should be given.

Dale's attorney-at-law submits that the jury should be asked to disregard John's evidence, he having been cross-examined by the prosecution as a hostile witness. The defence attorney-at-law requests a *Musthaq* direction. The prosecuting attorney-at-law opposes this on the basis that that direction applies in England and not your jurisdiction.

In your position as a judicial clerk to the trial judge, advise him in respect of both submissions and whether any additional special direction is required other than those referred to by the attorneys-at-law.

QUESTION 8

The government in your jurisdiction is concerned about two separate problems namely the threat of terrorism and the rising incidence of motor vehicle collisions due to drunken driving.

To this end the government has requested its draftsman to draft "firm" legislation to address the problems.

The two bills drafted in response are the Terrorism Prevention Bill and the Road Traffic (Drunken Driving) Bill.

In respect of the terrorism problem the bill prohibits anyone from “being a member of a proscribed organization, and professing to be a member of a proscribed organization”. The bill further provides a defence to an accused person

“...on proof by him that –

- (a) the organization was not proscribed at the time he became a member or began to profess he was a member; and
- (b) he did not take part in the activities of the organization while proscribed”.

In respect of the drunken driving problem the bill creates the offence in relation to any owner of a motor vehicle of “being found drunk in his parked motor vehicle”. Under the bill a defence will be open to an accused person on “...proof by him that there is no likelihood of his driving the vehicle while the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit”.

When the bills reach parliament the opposition opposes them strongly on the basis that they breach the “hallowed” presumption of innocence and no doubt will be struck down by the court.

The Attorney General of your jurisdiction has asked you, a member of his department, to advise on the validity of these provisions in the:

- (i) Terrorism Prevention Bill
- (ii) The Road Traffic (Drunken Driving) Bill

Advise.