

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2009

EVIDENCE & FORENSIC MEDICINE

(FRIDAY, MAY 22, 2009)

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 the use of stomach contents in establishing time of death.

 - (b) A 35 year old man with a history of depression and drug abuse is discovered by family members hanging from a tree. When investigators arrive at the death scene, the body is lying supine on the ground having been cut down by relatives.
 - (i) Describe postmortem findings that would confirm hanging as the cause of death.

 - (ii) Discuss autopsy findings that would enable the forensic pathologist to exclude ligature strangulation as the cause of death.

 - (c) Explain why the use of blood from the heart should be discouraged in suspected cases of poisoning.

 - (d) What is meant by the term 'indeterminate range gunshot wound'?
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PART B
EVIDENCE

QUESTION 2

- (a) In order to crack down on the rising number of persons practising plastic surgery without being registered to do so in your jurisdiction, the legislature passed the Plastic Surgery Act. The Act provided for a system of registration for all qualified plastic surgeons. It further provided by section 1 that –

“Anyone who holds himself out as a plastic surgeon without being registered in accordance with this Act is guilty of an offence.”

Hugh was charged under section 1 of the Act. The prosecution at his trial adduced evidence from persons to whom Hugh rendered supposed plastic surgery services. The prosecution however did not produce the register in question as part of its case.

Hugh’s attorney-at-law makes a no case submission on the basis that the prosecutor failed to prove an element of the offence, namely that Hugh was not registered. The judge overruled the no case submission and Hugh’s attorney-at-law, confident of success on appeal, called no evidence. Hugh was convicted.

Advise as to whether Hugh has a good ground of appeal.

- (b) Gary is charged for robbery, the allegation being that he boarded a taxi and held up and robbed the driver. The driver subsequently pointed out Gary on an identification parade.

At Gary's trial, Gary elected to remain silent but called his mother as a defence witness in support of his alibi. His mother testified initially that Gary was home on the night in question but she was discredited in cross-examination when it emerged that she could not recall the day or date.

The trial judge in summing up gave a *Turnbull direction* which also addressed the alibi. In addressing the alibi all the judge said was:

"Please remember ladies and gentlemen of the jury that the defence has no burden to prove that the accused was the robber on the night in question. It is for the prosecution to prove to you beyond a reasonable doubt, or in other words to the extent that you feel sure, that he was the robber there that night."

Gary was convicted and seeks your advice as to the adequacy of the judge's summing up on the issue of the alibi.

Advise Gary.

QUESTION 3

Mary is charged for murder, the allegation being that she and her co-accused, David and Charles, were part of a joint enterprise to murder the deceased, her boyfriend.

The evidence against Mary at their trial consisted entirely of circumstantial evidence. The evidence indicated that she set up a meeting with the co-accused persons in

relation to a proposed drug deal. He was murdered at the scene, allegedly by David and Charles.

When confronted by the police Mary initially denied any involvement or knowledge of a drug deal but later gave a written statement under caution admitting to knowledge of the deal but denying any knowledge of a plan to murder. Mary's attorney-at-law did not challenge the admissibility of this statement and it was admitted into evidence.

At her trial the judge overruled a no case submission by the defence. The no case submission was made on the basis that since the case against Mary was based on circumstantial evidence, the accused ought not to be called upon if the inferences therefrom could be equally consistent either with setting up a meeting for the drug deal or with setting it up to murder the victim. The trial judge rejected this proposition as erroneous and on that basis overruled the submission.

At the conclusion of the trial the judge gave no special directions in relation to Mary's reversed position to the police on her knowledge of the drug deal.

Mary was convicted and now seeks your advice as to whether she has good grounds of appeal in relation to:

- (i) the judge's approach to the no case submission; and
- (ii) the failure of the judge to give special directions as to Mary's reversed position to the police on the knowledge of the drug deal.

Advise Mary. Give reasons.

QUESTION 4

Roger was held by the police in relation to murder during a robbery. The police arrested Roger on the basis of a statement by Victor, the taxi driver who took Roger to the scene. The statement was under caution. Victor told the police that he had seen Roger several times before in his community, Westside, and knew him only by an alias, "Rambo". He also gave them a description. On the basis of Victor's statement, the police arrested and charged Roger for murder but did not hold an identification parade. Roger denied being known as "Rambo" and maintained he took no taxi that night and knew no taxi driver.

The prosecutor, based on Victor's statement, offered him immunity against prosecution in order to call him as a prosecution witness.

The prosecutor now seeks advice from you, his junior, as to:

- (i) whether an identification parade ought to have been held; and
- (ii) whether the judge should give any special directions in regard to the immunity given to Victor.

Advise the prosecutor.

QUESTION 5

Barry was on trial for robbery, the allegation being that he robbed Joan at gunpoint. The prosecution relied on Joan's identification of Barry on an identification parade and she testified to this at the trial.

The officer in charge of the parade then testified in examination-in-chief that Joan pointed out Barry on the parade and said, "He is the one." Barry's attorney-at-law cross-examined the officer to the effect that he was not telling the truth and that what Joan really said was, "He looks like the one."

The prosecuting attorney-at-law, in re-examination, invited the investigating officer to consult his note taken at the time of the parade as to what Joan said and sought to tender the note into evidence. Questioned by the judge, in the absence of the witness and the jury, as to his basis for doing so, the prosecuting attorney-at-law indicated two bases. Firstly, he said, to rebut the defence attorney-at-law's suggestion to the officer that he was not telling the truth as to what Joan said. Secondly, he said, to have the officer refresh his memory to testify in more detail as to what Joan said at the time of the parade. He said those details were omitted by the officer in examination-in-chief. The note indicated that Joan said on the parade, "He is the one." and also "I cannot forget his face."

The trial judge ruled that re-examination was permissible on both bases and allowed it as well as the admission of the note into evidence. The investigating officer then testified, after consulting his note, that Joan said, "He is the one. I cannot forget his face."

Barry was convicted and now seeks your advice as to whether he has good grounds of appeal on the two bases on which the judge allowed re-examination and the admission of the note. Advise Barry.

QUESTION 6

Tim and Ray were jointly charged and tried for kidnapping, the allegation being that they kidnapped the son of a wealthy businessman and later released him for a ransom.

Tim and Ray were previously held by the police when they were stopped in an allegedly stolen vehicle. The police discovered a copy of a videotape in the vehicle. The investigating officer viewed the videotape. He arrested and charged Tim and Ray for the kidnapping on the basis that it depicted scenes of both of them, whom he recognized, holding the victim hostage.

At Tim and Ray's trial the prosecution sought to admit the videotape into evidence to show the videotape to the jury. Their attorney-at-law objected on two bases. Firstly, that it was inadmissible because it was not the original. Secondly, that in any event it constituted hearsay. The trial judge allowed the tape to be viewed by the jury.

Later in the trial Ray sought to give evidence of duress. He contended that he was forced to participate in the kidnapping as a gang ritual by the gang leader, who was never held by the police. However, when Ray sought to testify as to the threats the gang leader made, the trial judge ruled that such evidence constituted hearsay and was inadmissible.

Tim and Ray were convicted and they now seek your advice as to the judge's rulings on:

- (i) the admission and viewing of the videotape; and
- (ii) the evidence as to the gang leader's threats.

Advise Tim and Ray.

QUESTION 7

Robert, a well known property developer, identified valuable real estate for sale by James, a businessman.

Robert, who wished to purchase the property for development, entered into negotiations with James. While in negotiations, Robert received an anonymous letter alleging that James was a drug dealer and had acquired the real estate with the proceeds of drug dealings.

Robert consulted Andrew, an attorney-at-law, for two purposes. One purpose was for advice on the anonymous letter as he was concerned about recent legislation allowing for the forfeiture of land obtained with the proceeds of drug dealings. Another purpose was to persuade Andrew to become an equity partner in the venture.

Andrew declined to become an equity partner in the venture and referred Robert to an attorney-at-law who practises criminal law on the question of the letter. Andrew also

became concerned about his conveyancing clients purchasing from James and to that end circulated copies of the letter to some of them.

In these circumstances James filed suit against Robert for defamation. Robert filed a defence to the effect that his publication of the letter to Andrew was the subject of legal professional privilege.

In response, James filed a reply denying that legal professional privilege applied on the following bases:

- (i) the relationship of attorney-at-law and client did not materialize and in any event Robert consulted his attorney-at-law in a business capacity;
- (ii) the advice sought by Robert from Andrew was not in contemplation of litigation;
- (iii) in any event, if privilege existed it was waived by Robert's attorney-at-law.

Advise on the merits of each of these bases.

QUESTION 8

John and Karl were roommates on Chancery Hall of a university in your jurisdiction. The police, acting on a tip, raided their room and discovered a package of cocaine hidden behind a refrigerator.

John and Karl were taken to the campus police station where John later gave a written confession to the investigating officer. John's confession was to the effect that he hid the cocaine and that Karl was innocent and was completely unaware of it. The next day John's girlfriend, Mary, turned up at the police station and told the investigating officer that she hid the cocaine.

John and Karl were charged jointly for possession of and dealing in cocaine. Mary, however, was not arrested or charged.

The prosecution elected not to attempt to adduce into evidence John's confession at the upcoming trial and informed Karl's attorney-at-law of this beforehand.

Advise Karl's attorney-at-law as to whether at the trial he can adduce evidence of:

- (i) John's confession. Would it make any difference to your answer if the prosecutor sought to tender the confession and it was ruled inadmissible; and
- (ii) Mary's confession.

Give reasons.
