

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2012

EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 18, 2012)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **QUESTION ONE** and **FOUR** others.
- (c) **ANSWER QUESTION 1 ON THE 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

Answer both (a) and (b)

- (a) Write short notes on each of the following:
- (i) Lacerated wounds;
 - (ii) Defense wounds;
 - (iii) Entry and exit gunshot wounds; and
 - (iv) Patterned wounds.
- (b) Briefly outline the medico-legal significance of each of the following:
- (i) Rigor mortis;
 - (ii) Presence of a “ligature mark” around the neck of a deceased;
 - (iii) Cocaine Bug Syndrome; and
 - (iv) Professional death sentence to a medical practitioner.

PART B
EVIDENCE

QUESTION 2

Advise on the burden and standard of proof in each of the following cases –

- (i) At Pablo's trial for the murder of Roberto, where his defence is that he acted in lawful self defence, having honestly believed, when he shot Roberto, that Roberto was about to attack him with a machete.
- (ii) At Kranky's trial for raping Roberta, where his defence is that he did not know the nature and quality of his actions at the time when the offence was allegedly committed because he was temporarily insane.
- (iii) At Carleone's trial for importation and distribution of cocaine, where he is charged on indictment before the Supreme/High Court, under a section of the relevant statute, which reads as follows –

“Any person found in possession of a quantity of more than ten kilograms of cocaine shall be deemed to be an importer and a distributor of the drug and shall be guilty of an offence, unless that person was in possession of the drug for some lawful purpose.”

QUESTION 3

Tony is charged with the rape of Mary, a child aged 13 years old who was in the foster care of himself and his wife. He is also charged in separate proceedings for assaulting his wife, the allegation being that he beat and threatened her in an effort to prevent her from reporting the alleged rape of Mary to the police.

Advise on:

- (i) the principles and procedure applicable to the competence of Mary to give evidence in relation to the rape charge; and
 - (ii) the competence and compellability of Tony's wife as a witness for the prosecution against Tony, in relation to the assault charge involving her and also the rape charge in relation to Mary.
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QUESTION 4

Joe is charged with the attempted rape of Tina.

The allegations of the prosecution are that Joe accosted Tina on a secluded beach. Tina, it is alleged, fought him off and escaped. She subsequently made a report to the police in which she identified Joe as someone whom she recognized by the nickname "Creepy" from high school. She later identified Joe on an identification parade after he was arrested by the police.

It is also part of the prosecution's allegations that Joe, when he was arrested by the police, initially denied that his nickname was "Creepy" but later admitted that this was in fact the case.

At Joe's trial before a jury, Tina and the police give evidence in support of these allegations. Joe also gives evidence in his defence to the effect that he was elsewhere at the time of the alleged attempted rape.

Advise on whether the trial judge ought to give any special directions to the jury in the circumstances, giving reasons. Summarize the contents of any such special directions.

QUESTION 5

Prior to Archie's trial for burglary, Lena, the main prosecution witness, who was the owner of the house which had allegedly been burgled, was allowed to read the statement which she had given to the police a month after the incident. When she was called to give evidence at the trial, Lena hesitated for a moment when asked to list the items which had been taken from her home by Archie. Just as she seemed to be about to answer, the trial judge, the notoriously impatient Lawanda J, instructed the prosecutor to give Lena's police statement to her and directed Lena to read it to herself. After a few minutes had elapsed, Lawanda J asked Lena whether she was now ready to resume giving her evidence and, when she replied affirmatively, she was directed by the judge to continue. She then proceeded to give detailed evidence listing the items stolen (ten in all) and stating what value she attributed to each item.

Later in her examination-in-chief, prosecution counsel attempts to elicit from Lena evidence of her having told her sister the day after the burglary, and her pastor two days later, that the person who had burgled her house was "Miss Matty's no-good thieving son Archie". Miss

Anctus, Archie's counsel, at the trial, who was just a year and a half out of law school at the time, objects to this evidence being led, on the ground that its "highly prejudicial nature far exceeds its probative value". However, even before she is able to tell the judge her authority for this submission, and without hearing counsel for the prosecution in response, Lawanda J rules the evidence admissible, asking Miss Anctus, "Didn't they teach you at law school that just because evidence is prejudicial doesn't make it inadmissible?"

Archie was convicted and Miss Anctus seeks your advice as senior counsel on the prospects of an appeal, on three bases. Firstly, that it was, as Miss Anctus puts it in her letter of instructions to you, a "blatant breach of procedure", for Lena to have been allowed to read her police statement before the trial; secondly, that the procedure by which Lena was allowed to refresh her memory was, "highly irregular"; and, thirdly, that Lena was allowed to give "ridiculously prejudicial evidence" of what she had told her sister and her pastor after the burglary.

Advise Miss Anctus.

QUESTION 6

Jones is charged with the gun murder of a wealthy businessman Roy during the burglary of Roy's home. Roy's body was discovered immediately after a gunshot was heard at his home. The prosecution proposes to adduce evidence at Jones' trial from the following persons –

- (a) The telephone operator of a private security firm contracted to Roy's premises. The telephone operator will testify that Roy called her in distress and during the call she heard a gunshot. She will further testify that she heard Roy, who stayed on the line, tell her that the licence number of the getaway car was B123.

- (b) A manager of the Motor Vehicle Registry to produce records from the Registry which indicated that the licence number in question, B123, belonged to a car owned by Jones. However he, the manager, has no personal knowledge of the truth of the contents of the record in question.
- (c) The investigating officer in the case who will testify to the effect that on searching Jones' home he found several newspaper clippings in relation to Roy's murder prominently displayed on a notice board.

Advise on the admissibility of these items of evidence.

QUESTION 7

Tom and Barry are charged with the robbery of a bank in your jurisdiction.

The prosecution's evidence against both men includes confessions allegedly made by both to the police. In the case of Tom, it is alleged that he made an oral confession and this is the sole evidence the prosecution has against him. In the case of Barry it is alleged that he made a written confession.

At the trial of Tom and Barry before a jury both of their attorneys-at-law indicate to the trial judge, in the absence of the jury, that they intend to object to the admission of the confessions. Tom's attorney-at-law indicates that the basis of his objection is that the oral confession is a complete fabrication by the police. Barry's attorney-at-law indicates that the basis of his objection is that the written confession was prepared by the police and that Barry was forced to sign it.

You are the clerk to the trial judge who asks you to advise him on the following:

- (i) Should he hold a *voir dire* in respect of each confession? Give reasons.
- (ii) Assuming a *voir dire* is held and the confessions are admitted, should he allow the defence attorneys-at-law to cross-examine on and have their clients testify to their allegations, of fabrication in the case of Tom, and force in the case of Barry?
- (iii) What special directions, if any, should he give the jury in relation to such allegations if Tom and Barry testify to these? Are there any additional special directions necessary in relation to Tom's alleged oral confession?

QUESTION 8

Jamie is charged with the murder of a ten year old girl, Asia. The murder was allegedly committed during a short period when Jamie had escaped from Broadend, an institution for the incarceration of the criminally insane. Jamie denies having murdered the girl, although he admits to having been in the general area in which her body was found, at about the time when, according to the pathologist's evidence, she would have been killed.

The prosecution seeks to adduce evidence at his trial of the two previous occasions on which Jamie had confessed to strangling two girls of around the same age in generally similar circumstances. Each of the girls had been strangled manually, there was no evidence that they had been sexually interfered with and in each case the bodies had been left out in the open, without any apparent attempt at concealment. However Jamie had not been tried in respect of the previous killings, as it had been determined that he was unfit to plead.

The defence objects to this evidence, on the ground that there is no striking similarity between this evidence and the circumstances of the alleged murder of Asia. Accordingly, the submission concludes, this evidence does no more than deepen the suspicion against Jamie.

How should the trial judge rule on this objection? Give reasons for your answer.

END OF PAPER