

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS OCTOBER 2014**

EVIDENCE AND FORENSIC MEDICINE

(THURSDAY, OCTOBER 2, 2014)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

FORENSIC MEDICINE

QUESTION 1

Answer both (a) and (b)

- (a) Write short notes on the following:
- (i) Bruise
 - (ii) Incest
 - (iii) Illusion
 - (iv) Privileged communication in medical practice
- (b) What is postmortem lividity? Discuss in brief its medico-legal significance during investigation of a death.
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PART B

LAW OF EVIDENCE

QUESTION 2

Answer both (a) and (b)

- (a) Section 11 of a statute dealing with offensive weapons in your jurisdiction provides as follows –

“Any person who without lawful authority or reasonable excuse is found in possession in any public place of any offensive weapon as hereinbefore defined shall be guilty of an offence.”

Your client, who is a small farmer, was found in possession of a machete (which conforms to the statutory definition of an offensive weapon) at a political meeting being addressed by the Leader of the Opposition in the town square and was charged with an offence under section 11. His instructions to you are that he had actually been on his way to his vegetable plot on the outskirts of the town when his attention was attracted by the large gathering in the square. He had merely stopped for a few minutes to observe and to hear what was the latest promise being made in exchange for the people’s support in the upcoming general elections.

Advise on the burden of proof on a prosecution under section 11.

- (b) On Warren’s trial on a charge of murder, his defence is that he acted in lawful self-defence. In the course of his summing-up to the jury, the trial judge directs the jury in this way –

“The force used by the accused must not have been by way of revenge or spite, and it is for the prosecution – sorry, strike that - it is for the defence to satisfy you that the accused honestly believed that the force used by him was necessary to prevent or resist the attack which he says that the deceased was about to launch upon him. But apart from that, it is generally for the prosecution to prove the case against the accused and

what you must consider is whether, just as you would do if you had to make an important decision in your own life, to buy a house, for instance, you are comfortably satisfied that a finding of guilt against the accused is the correct one.”

Warren is convicted and seeks your advice as to his chances on appeal.

Advise Warren.

QUESTION 3

Answer both (a) and (b)

- (a) Describe and discuss the ‘without prejudice rule’. What is its value in the process of civil litigation?

 - (b) Distinguish, with reference to decided cases, the rules of legal professional privilege as they relate to communications between attorneys-at-law and their clients and communications between attorneys-at-law or their clients and third parties.
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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

Simone, who is married to Frank, is charged for the murder of Judith, her husband's mistress.

The allegations are that Simone trailed Judith home and then drove her car into Judith causing her death.

The prosecution proposes to rely on the following items of evidence:

- (i) Judith's neighbour who will say that immediately on hearing Judith's distressed cry for help she went outside and heard when Judith said, "The person who did this is Simone, Frank's wife.";
- (ii) a doctor at the hospital will say that some two hours after the incident and emergency surgery Judith said "Doctor I don't think I'll make it. Tell Frank to tell Simone that she finally succeeded in her bid for revenge.";
- (iii) a telephone bill found at the scene in Simone's name by the investigating officer who will testify to this.

You are a junior prosecutor in the case and you have been asked by your senior to advise on whether there are bases to challenge these items of evidence as hearsay.

Advise your senior.

QUESTION 6

John and Karl were room-mates 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; and
- (ii) Mary's confession.

Give reasons.

QUESTION 7

Jane and Joe are ten-year old children at a school in your jurisdiction and Peter is a janitor employed to the school.

The children alleged that one day after school, while they were in the classroom alone, Peter entered the classroom and used a knife to threaten them, and that he robbed Joe of his cell phone and sexually assaulted Jane.

Both Jane and Joe reported the matter later that day to their teacher Robert. Peter was subsequently arrested and charged for robbery and rape.

Advise on:

- (i) the competence of the children to give evidence and the procedure to determine this; and
 - (ii) the admissibility of the contents of the reports of each of the children to their teacher and the conditions of admissibility, if any, that apply.
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QUESTION 8

Davinia is charged with murder of a gas station owner during the robbery of a gas station. The evidence for the prosecution is that she was the only woman in a group of four persons who held up the two gas station attendants who were at work at 10.30 p.m., as they were tallying up the cash, with a view to closing for the night.

Davinia is identified at the trial by one of the attendants, who had also previously identified her at an identification parade. This attendant tells the jury that, while Davinia was not known to him before the night in question, he “could never forget her as she is the one who levelled the ‘nine’ at us, while the others grabbed up the cash”. The ‘nine’ is the popular ‘street’ name for the powerful 9 millimetre pistol.

The other attendant did not attend the identification parade due to illness, but she was called to give evidence at the trial and also identified Davinia, who she had never seen before the night of the murder, as “the lady with the big gun”.

Both witnesses testified that this was without a doubt the most frightening experience which they had had in their lives, but insisted that they were able to identify Davinia. They said that although they had actually been able to observe her for “no more than a minute or two”, the lighting inside the gas station had been excellent. They said they had had a clear view of her profile, as she stood at the door to the station watching the traffic passing on the road outside and keeping watch on them, while her colleagues scooped up the money from behind the counter. It appears from her attorney’s cross-examination of the prosecution’s witnesses that Davinia’s defence is that she has been mistakenly identified, in that on the night of the murder she was at home alone with her ailing mother, who has in fact since died.

You have been doing your in-service training in the Criminal High/Supreme Court and, at the close of the prosecution's case, you are asked by the trial judge to assist him by preparing a note of:

- (i) the matters he should take into account in considering the no case submission that Davinia's counsel has indicated that he will make when court resumes the following morning; and
- (ii) the directions which he will be required to give to the jury on the identification by the witness who did not attend the identification parade, in the event that the no case submission does not succeed.

The judge has also asked you to point him to the authorities upon which your note is based.

Advise the judge.

END OF PAPER