

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2013

LAW OF EVIDENCE AND FORENSIC MEDICINE

(THURSDAY, AUGUST 15, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A
FORENSIC MEDICINE

COMPULSORY

QUESTION 1

Answer (a), (b) and (c).

- (a) Write short notes on each of the following:
- (i) Abrasions
 - (ii) Hesitation wounds
 - (iii) Tandem bullet wounds
 - (iv) Hanging
- (b) Discuss the various aims and objectives of a post-mortem examination.
- (c) What is 'exhumation' of a dead body?
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PART B

EVIDENCE

QUESTION 2

Ken is charged with robbery. The defence has called a witness who testifies that he has known Ken for many years and he is a person who is well respected in the community for his honesty and integrity.

- (i) If Ken has no previous convictions or charges, what directions must the judge give to the jury?
 - (ii) If Ken has a previous conviction for drug trafficking, what use can the prosecution make of this and how should they proceed?
 - (iii) Assuming that, instead of calling a witness, Ken has given sworn evidence in which he asserts his good character, would it make any difference to your answer to (ii)?
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QUESTION 3

Nigel is suing his employer, X Co., for damages for personal injuries he received when a machine he was operating malfunctioned and crushed his fingers.

Advise X Co., and give reasons for your advice, whether the following written communications are subject to disclosure and inspection –

- (i) A report from the company's safety engineers to X Co. prior to Nigel's accident indicating that the safety circuits in the machine were defective and in need of repair.
 - (ii) A report from the safety engineers to X Co.'s attorneys-at-law on the cause of the accident itself in response to a request for this from X Co. after it was sued.
 - (iii) Correspondence from X Co.'s attorneys-at-law to X Co. after the accident, advising that the suit be settled.
 - (iv) Correspondence between X Co.'s attorneys-at-law and Nigel's attorneys-at-law, not headed up 'without prejudice', concerning settlement discussions between them which subsequently broke down.
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QUESTION 4

Anna was walking along Harris Street one day around noon when she was attacked by a man who forced her, at knifepoint, into a nearby abandoned house. The man then proceeded to rape her after which he threatened her should she tell anyone. The entire incident lasted for about half an hour.

Anna immediately made a report to the police and gave a detailed description of her attacker. The next day, Tommy, who matches the description, is arrested. He refused to be placed on an

identification parade but was nevertheless charged with the offence. At the preliminary enquiry Anna pointed him out as her attacker as he sat in the dock.

Tommy is now being tried at the Assizes/Circuit Court for rape and his defence is mistaken identity.

- (i) If the defence makes a no case submission on the basis that the identification is of poor quality, how would you respond as prosecuting counsel?
 - (ii) Assuming that the case goes to the jury, what special directions must the judge give to the jury in his summing up in respect of Anna's evidence?
 - (iii) Would it make any difference to your answer at (ii) if after Tommy refused to be placed on an identification parade, he was confronted with Anna who then and there identified him as her attacker?
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QUESTION 5

- (a) Sophia and Shawn have a troubled marriage and Shawn has a history of physically abusing her. Sophia's brother intervenes on behalf of his sister during a violent knife attack by Shawn on her. Sophia and her brother are wounded.

Advise on Sophia's competence and compellability to testify against Shawn in the following circumstances:

- (i) Where he is charged for wounding her with intent.
 - (ii) Where he is charged on the same indictment, on separate counts, for wounding both with intent.
 - (iii) Where he is charged for the wounding with intent of her brother.
- (b) Assume on the facts mentioned above that Sophia's six-year old son was present. Briefly advise under what circumstances, if any, he would be competent to testify in court.
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QUESTION 6

Andrew and Barry were jointly charged for murder. Andrew gave a written statement to the police in which he incriminated himself and Barry, but which was not under caution. At the time Andrew gave the statement, a warrant for his arrest had already been issued and executed.

At their trial, Andrew's attorney-at-law challenged the admissibility of his statement on a *voir dire* in the absence of the jury. He did so on the basis that the police beat him and thereby coerced him to give the statement and in any event, under the Judges' Rules, he ought to have been cautioned beforehand.

On the *voir dire* the prosecutor cross-examined Andrew as to whether the statement was true and Andrew reluctantly admitted it was.

At the conclusion of the *voir dire* the judge ruled that the statement by Andrew was admissible. In his terse ruling the judge said –

“I have no obligation to give any reason for my ruling but, for what it is worth, I am admitting the statement because the accused admitted that it was true. As for the Judges’ Rules, these are administrative guidelines for the police and so a breach thereof, which I concede occurred, adds absolutely nothing for my consideration”.

The trial judge then recalled the jury and admitted the statement into evidence. At the conclusion of the trial the judge in his summing up asked the jury to consider the statement against both Andrew and Barry. Both were convicted.

Are there valid grounds of appeal in respect of each conviction? Give reasons.

QUESTION 7

David has been convicted of indecently assaulting Elaine, a girl aged 12. Elaine’s sworn evidence was that when she was exercising her puppy at dusk in a public park, she was approached by a man who said that he had a puppy exactly like hers and invited her to his home, which he said was just two minutes away, to see it. On the way he talked obscenities to

her and pulled her behind some bushes, where he committed an indecent assault on her. She was not, however, very confident in her identification.

Fay, a girl aged 15, was allowed to give sworn evidence in David's trial, of an almost identical approach to her in a public park about two weeks before and also at dusk. She said she had run away when the man started talking obscenities and that no assault had been committed on her. Her identification of the accused is far more positive. Although Elaine and Fay attend the same school, it appears that they hardly know each other.

Advise on the chances of a successful appeal on the ground that Fay's evidence had been wrongly admitted.

QUESTION 8

George is charged with the murder of his wife.

The prosecution's case is, *inter alia*, that her concerned co-workers noticed her missing for several days and called the police. When questioned by the police, George told them that his wife had become frustrated with the marriage and had migrated. A few days later his wife's body was discovered. George then told the police he killed her in self-defence but had not said so previously because he thought no one would believe him.

At the trial the prosecution adduce evidence of the lie, although there is other evidence against George.

- (a) Should the trial judge give any directions in relation to George's lie? Identify and explain any such directions.

- (b) Did George have any burden in relation to his defence of self-defence, and if so, identify and explain the type of burden.

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