

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2015

LAW OF EVIDENCE AND FORENSIC MEDICINE

(TUESDAY, AUGUST 11, 2015)

Instructions to Students

- (a) Time: **3½ hours**

- (b) Answer **QUESTION ONE** and **FOUR** others.

- (c) 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.**

- (d) It is unnecessary to transcribe the questions you attempt.

- (e) 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

- (a) Discuss briefly the medico-legal significance of the following:
- (i) Hesitation wounds
 - (ii) Postmortem stains
 - (iii) Delirium Tremens
 - (iv) Presence of a ligature mark in the neck of a deceased
- (b) Outline the medico-legal significance of antemortem and postmortem wounds. Discuss how these wounds can be distinguished on a dead body with a few suitable examples.
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PART B

EVIDENCE

QUESTION 2

- (a) Roger was tried for and convicted of wounding with intent.

When Roger was arrested by the police he gave them a written statement under caution. In that written statement Roger admitted to punching the complainant to the face and thereby wounding him. He, however, went on to assert that it was in self-defence. He said that after a quarrel between them that the complainant lunged to attack him first and it was in those circumstances he had to punch the complainant.

At Roger's trial before a jury the prosecution put Roger's statement into evidence through the policeman who had taken it.

After the prosecution had called all its witnesses, including the complainant, the prosecution then closed its case. Roger then elected to remain silent and not call witnesses in his defence.

The judge summed-up the case to the jury and said the following:

"Members of the jury the accused man gave no evidence to support his claim of self-defence in his statement to the police. You must therefore disregard that claim in coming to your verdict as to whether you feel sure of his guilt".

Roger was convicted and seeks your advice as to whether he has grounds of appeal.

Advise him.

- (b) Assume on the facts at (a) above that, at the close of the prosecution's case, Roger wished instead to give evidence of self-defence. What burden(s), if any, would he bear in relation to that defence?

QUESTION 3

Mary and Jim, a married couple had separated because of their continuous arguments. During the separation Mary filed for divorce and custody of their twelve-year-old son, Tom.

During the period of separation Mary went on a date with Stephen. On their return to Mary's home, Stephen was walking Mary to their front door when Jim, who had apparently been trailing them, violently assaulted Stephen with a cricket bat. Stephen's arm was broken as a result of the assault. Jim was later arrested and charged by the police for causing grievous bodily harm to Stephen with intent.

The police took statements from Tom because he saw the incident from the window of the house (his babysitter was at the house but did not witness the incident). The police also took a statement from Mary.

You are a prosecutor in the Attorney General's /DPP's Department and the police seek your advice on the competence and compellability of both Tom and Mary.

Advise the police.

QUESTION 4

You are an attorney and your client is a chartered accountant.

Your client conducted an audit of a company for the purpose of preparing its audited accounts. He prepared and submitted the relevant documents but failed to detect a fraud on the part of the company's employees. The fraud was discovered subsequently. The company sued your client in the Supreme/High Court for professional negligence because of his failure to detect the fraud.

The hearing of the Case Management Conference was concluded and your client has seen a copy of the court order that the company make standard disclosure and vice versa.

Your client wishes an explanation of the process of complying with the order for standard disclosure. Advise your client by giving him the explanation requested, along with a brief further explanation of the bases to withhold documents from inspection by the other side.

QUESTION 5

Simon was tried for and convicted of shooting with intent.

The prosecution's case was that Simon was in the company of David, a gang leader, in a house. Based on information, the police had gone there when both opened fire on them from the house. The police returned the fire and forcibly entered the house to find David gravely wounded. Simon was wounded also, but less seriously. David died on the way to hospital.

Simon's attorney-at-law at trial, a junior counsel, attempted in cross-examination, to elicit evidence from the police as to what David told them while gravely wounded. In the absence of the jury he informed the trial judge that his instructions were that David told the police that Simon was a junior member of the gang. David further said that he had forced Simon to shoot at the police, failing which he, David, would kill him. The trial judge ruled that this line of cross-examination sought to adduce inadmissible hearsay and ruled that David's attorney-at-law not pursue it.

Simon gave evidence in his defence at trial after the prosecution closed its case. He sought to give evidence that David had threatened to kill him unless he shoot at the police. The trial judge ruled that any such evidence was inadmissible hearsay.

You are senior counsel and Simon now seeks your advice after his conviction. He wishes to know whether he has grounds of appeal in relation to the trial judge's rulings.

Advise him. Give reasons.

QUESTION 6

Linton and Errol were tried for and convicted of murder. Both approach you for advice as to whether they have grounds of appeal.

You note from the transcript of the trial that each had challenged the admissibility of statements under caution, allegedly given by each to the police.

Each applied, through their then attorney-at-law, to the trial judge for a *voir dire*. Linton applied for the *voir dire* on the basis that the police had fabricated a statement and forced him to sign it by beating him mercilessly. Errol applied for the *voir dire* on the basis that the statement attributed to him was a complete forgery.

The trial judge ruled against a *voir dire* in each case. He did so on the basis that no issue of voluntariness arose because in both instances it was alleged that the police fabricated the statements.

Linton and Errol, in light of the judge's rulings and in the jury's presence, pursued their allegations against the police in cross-examination and in their evidence.

At the end of the trial, the trial judge directed the jury along the following lines:

"Members of the jury, the only issue before you is the truth of these alleged statements. If you believe them to be true then you should rely on them as you see appropriate, notwithstanding the allegations pursued by the accused men in cross-examination and in their evidence".

Advise Linton and Errol if they have grounds of appeal. Give reasons.

QUESTION 7

(a) Ron was tried for and convicted of the rape of Tina.

The prosecution's case was that Ron took Tina on a date, drove on a lonely road and there raped her.

At the trial, Tina gave evidence that when she got home that night she told her roommate, Belinda, what happened. Ron's then attorney-at-law had objected to this evidence, but his

objection was overruled by the judge. Belinda, however, had not given a statement to the police and so did not give evidence.

Ron's then girlfriend, Tabitha, had given a statement to the police that he had confessed the rape to her. At the trial she went into the witness box and was sworn. She, however, refused to give evidence. The trial judge allowed the prosecutor to treat her as a hostile witness and cross-examine her on her previous statement to the police. The trial judge allowed this despite the objection by Ron's attorney that there was no basis under the applicable statute to treat a witness as hostile once the witness in question refused to give evidence.

The trial judge gave no special directions in relation to Tina's evidence that she told her roommate, Belinda, what happened.

Ron now seeks advice from you, his new attorney-at-law, whether he has grounds of appeal in relation to these events at trial.

Advise him. Give reasons.

QUESTION 8

Marlon is tried for and convicted of the murder of a man in a drive-by shooting at night.

The prosecution's case was that the deceased and other men were playing dominoes on the roadside by a bar. The main witness, Carlton, who was one of the men playing dominoes, gave evidence that he recognized Marlon as one of the gunmen in the car as it sped by. He had seen him in the community before on one or two occasions but did not know him. Carlton gave evidence that he saw him for a few seconds as the car drove by under a streetlight. He further gave evidence of identifying Marlon on an identification parade.

At Marlon's trial his then attorney-at-law made a no case submission on the basis that the quality of the identification evidence was so poor that Marlon ought to be acquitted. The trial judge ruled against the submission and, in his ruling, stated:

"Despite intense cross-examination of the main witness, Carlton, no inconsistencies emerged to shake his credibility. Credibility is a matter for the jury and so I rule that the accused has a case to answer."

Marlon then gave evidence of an alibi to the effect that he was with his ex-girlfriend at her home at the time of the alleged drive-by shooting. His ex-girlfriend also gave evidence for Marlon but several inconsistencies emerged in cross-examination between her evidence of Marlon's movements that night and his evidence.

The trial judge directed the jury along the following lines:

"Members of the jury, if you find the witness, Carlton, to be an honest witness then you are entitled to regard this as a significant factor in supporting his identification of the accused. Also, if you conclude that the alibi of the accused is false, based on the inconsistencies between his evidence and that of his ex-girlfriend then, again, you can use that finding to support the identification of Marlon by Carlton."

Marlon now seeks your advice, as his new attorney-at-law, whether he has ground(s) of appeal. Advise him. Give reasons.

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