

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2014

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 16, 2014)

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

- (a) Write short notes on each of the following:
- (i) Patterned injuries
 - (ii) Shot gun entrance wound
 - (iii) Hesitation cuts
 - (iv) Postmortem stains
- (b) Discuss briefly the **medico-legal significance** of the following:
- (i) Presence of fingernail marks and bruises on the neck of a deceased
 - (ii) Dead body showing adipocere change
 - (iii) Postmortem artifacts
 - (iv) Cocaine bug syndrome
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PART B
EVIDENCE

QUESTION 2

- (a) Arising from a spate of domestic murders in your jurisdiction, the government proposes to pass legislation requiring defendants in criminal cases for murder to prove the partial defence of provocation.

The Bill states that:

“Where a defendant to the offence of murder seeks to rely on the partial defence of provocation such a defendant is required to prove the said defence.”

You are an attorney-at-law in the office of the Attorney/Solicitor General of your jurisdiction. Your senior has asked you to advise on the likely approach of the court if the constitutionality of the Bill is challenged, on the basis that it is inconsistent with the presumption of innocence in your constitution. Advise him.

- (b) In a murder case before a jury in the High/Circuit Court of your jurisdiction, the judge excuses the jury at the close of the prosecution’s case. He then hears a no case submission by the defence attorney-at-law and the prosecutor’s response. The judge then adjourns for time to consider the law in respect of the submission.

He asks you, his judicial clerk, to advise him briefly on the law on the assumption that he considers the case against the accused, which is based on circumstantial evidence, to be “... thin, perhaps very thin.”

- (i) Advise the judge.
(ii) Assuming the judge’s instructions are the same but the prosecution’s case is based solely on disputed identification evidence, would your answer be any different? Explain.

QUESTION 3

Andrew is charged for extortion and his trial is pending. The allegation against him is that he, then a new recruit to the “Badmind Gang”, extorted money on his gang’s behalf from businessmen in the neighbourhood in question.

In separate proceedings, there is a murder charge pending against Donald alone, a member of the same gang. The allegation against him is that he and Andrew went to the business place of a businessman in the area. Andrew stayed outside while Donald went inside and there shot and killed the businessman because of his refusal to yield to extortion.

You are a junior in the Office of the Director of Public Prosecutions/Attorney General in your jurisdiction. Your senior advises you that no charge was laid against Andrew for the murder because there is no evidence that he knew Donald was armed, and neither is there evidence to suggest that Andrew thought it was anything other than a visit to the business place solely for extortion purposes.

Your senior wishes your advice on:

- (i) whether he can call Andrew as a prosecution witness in the murder case against Donald on the assumption that Andrew is willing to be such a witness; and
- (ii) assuming that Andrew can give and does give evidence as a prosecution witness against Donald, whether the judge should give special directions to the jury and, if so, the nature of these.

Advise your senior, giving reasons.

QUESTION 4

Jim is a recent recruit to the police force in your jurisdiction. While off duty having a drink in a bar in plain clothes, he saw two gunmen, unknown to him, enter the bar. They proceeded to rob, shoot and kill the bartender and then flee the scene. The incident took approximately four minutes. Jim reported the incident at his police station in the area and gave a description of the men.

The next day, policemen stationed at Jim's police station received information that one of the gunmen was in the area with a group of men. They summoned Jim to accompany them in a police party in search of the gunmen and he did. On reaching the group of men, the police party came under gunfire and one of the men was held while fleeing. Jim identified him then and there as one of the gunmen in the bar the previous day. The man, Roger, was arrested and charged for murder.

Distraught at the stressful start to his police career, Jim took a short vacation abroad. While he was away, the police received further information on the other gunman at the bar. Acting on that information, they arrested and charged David, jointly with Roger, for the murder at the bar. They held no identification parade for David because Jim was still abroad on vacation at the time and hence unable to attend.

Upon arrest, both Roger and David deny having been at the bar.

You are the prosecutor assigned to prosecute the upcoming joint trial of Roger and David for murder. You anticipate objections by the defence to the admissibility of the identification by Jim of Roger on the basis that it was a confrontation identification, and the identification of David on the basis that it will be a dock identification.

- (i) Assess the merits of these anticipated objections by the defence; and
 - (ii) indicate if the judge should give special directions to the jury if the identifications are admitted, and if so, the contents of such directions.
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QUESTION 5

Jane is a witness to a drive-by shooting of her relative by a reputed gangster in her volatile neighbourhood. Jane knew the gangster before as Barry, having gone to the same school and having seen him in the neighbourhood on a daily basis. Fearful for her life Jane delayed in giving a statement to the police until a month after the shooting. Barry was subsequently arrested and charged for attempted murder.

At the trial before a jury, Jane attended court as a prosecution witness under a subpoena. While being examined-in-chief by the prosecutor Jane testified that she saw the shooting but did not recall who shot the relative. The judge allowed Jane to refresh her memory from her statement to the police but she still maintained that she could not recall who shot her relative. The prosecutor then successfully applied to the judge for Jane to be treated as a 'hostile' witness and he then confronted Jane with her previous statement to the police. When confronted with the statement, Jane admitted that she identified Barry therein, but initially denied that the statement was true. After further questioning by the prosecutor, Jane eventually admitted that her statement was true.

At the conclusion of the trial, the judge in his summing up reminded the jury that Jane was cross-examined by the prosecutor although he had called her as his witness. In those

circumstances, the judge indicated to the jury that it was for them to decide whether to believe any aspects of her evidence.

Barry was convicted and his attorney-at-law proposes to argue two grounds of appeal. The first ground is that the trial judge erred in allowing Jane to refresh her memory from a “non-contemporaneous” statement. The second ground is that, since Jane was cross-examined by the prosecutor, the trial judge ought to have indicated to the jury that her evidence ought to have been disregarded in its entirety.

Advise on the merits of both grounds of appeal.

QUESTION 6

Jack is charged with the murder of his wife at their home by shooting her with his licensed firearm.

The prosecution have in their possession a statement to the police by the mother of the deceased who also lived at the home. Her statement was to the effect that she was in a separate room at about 5:00 p.m in the evening when she heard a heated argument between the deceased and the accused. She said that shortly thereafter she heard a gunshot and, fearing the worst, she fled the scene. The mother of the deceased has since died but the prosecution propose to tender her statement into evidence under recent legislation which allows for this in respect of statements in documents of persons since deceased. There is a constitutional challenge to this legislation pending in the constitutional court. The basis of the

challenge is that the legislation is inconsistent with the constitutional right of an accused to confront witnesses who give evidence against him.

The prosecution also propose to call as a witness a police telephone operator. She gave a statement to the police to the effect that she received a telephone call at about 5:00 p.m from a number matching the number of the home in question. She said the lady on the line on the other side was speaking hysterically and asking for a squad car to be sent immediately to the home, giving the address of the home of the deceased.

Another proposed witness for the prosecution is the investigating officer who will testify that when he confronted the accused, he, under caution, said that the gun went off accidentally while he was cleaning it. He also admitted that it was during an argument with his wife because she was protesting his having a licensed firearm.

Advise on:

- (i) the likely success of the constitutional challenge;
 - (ii) the admissibility of the evidence of the police telephone operator; and
 - (iii) the evidential value, if any, of the pre-trial statement of the accused to the investigating officer.
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QUESTION 7

Tim and Justin were charged with the robbery of a bank in your jurisdiction. The allegation against both is that they acted in concert and that they were armed with guns at the time.

At the trial, the prosecution called a senior police officer for the purpose of tendering into evidence a written statement under caution by Tim. Early in the examination-in-chief of this officer, and before any mention of the statement, the judge invited the jury to withdraw so that legal issues could be considered in their absence.

In the ensuing voir dire, the defence challenged the officer in cross-examination to the effect that he had beaten Tim to have him sign a pre-prepared statement in which he admitted involvement in the robbery, but alleged that Justin was the mastermind behind it. While Tim was giving evidence in the voir dire to this effect the judge, despite objection from the defence, allowed the prosecution to cross-examine Tim on the truth of the statement. Tim admitted its truth. The judge later ruled that the statement be admitted into evidence. He indicated that the basis of his ruling was the admission by Tim that the statement was true.

On the return of the jury, the statement was admitted into evidence. However, Tim's attorney-at-law continued to allege in cross-examination that Tim was beaten and that he signed the statement involuntarily. Tim also gave evidence to this effect.

At the conclusion of the trial, the judge summed up to the jury on the statement along these lines:

"Members of the jury, you should know that in your absence I conducted a hearing to determine whether to admit this statement into evidence. I was satisfied that it should be admitted for your consideration. Granted, it is now for you to consider whether you believe the statement is true - the entire statement, what the accused says about his involvement and also what he says of his co-accused that he was the mastermind.

If you believe the statement to be true then you may rely on it whether or not you believe that he affixed his signature to a pre-prepared statement because he was beaten as alleged by the defence.”

Tim is convicted and now seeks your advice as to whether he has grounds to appeal. Advise him.

QUESTION 8

Island Attractions Ltd is a company registered in your jurisdiction which owns and operates adventure attractions primarily for the tourist market.

At one of the company’s attractions it operates a zipline service through the forest at the location. The zipline was supplied and installed by another local company specializing in the development of attractions, namely Specialist Adventures Ltd.

Two years ago a tourist at the attraction was injured when the zipline collapsed, causing him to plunge to the ground. The tourist filed an action against both Island Attractions Ltd and Specialist Adventures Ltd. In respect of the former, it was alleged that it failed to properly maintain and operate the equipment. In respect of the latter, it was alleged that it provided defective equipment.

You are a junior associate at a law firm representing Island Attractions Ltd. Your senior informs you that the case management conference in the matter was just heard and that the judge made an order for standard disclosure by all parties.

In reviewing the file you note the existence of the following documents:

- (i) A report to your client from a firm of safety engineers employed by it prior to commencement of its operations, certifying that the zipline was safe and free of defects.
- (ii) Correspondence between your firm and the client in which your client seeks advice as to whether to settle, and your firm's response advising attempts be made to negotiate a settlement.
- (iii) Correspondence between your firm and the law firm representing the claimant in a bona fide attempt to settle and avoid trial but which eventually bore no fruit.

Advise on the treatment of these documents with reference to a List of Documents.

END OF PAPER