

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2013

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 17, 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 both (a) and (b)

(a) Write short notes on each of the following:

- (i) Incised wound
- (ii) Postmortem lividity
- (iii) Shotgun entrance wound
- (iv) Instantaneous rigor

(b) Briefly outline the medico-legal significance of each of the following:

- (i) Ligature mark around the neck of a deceased
- (ii) Postmortem artifacts
- (iii) Delirium tremens
- (iv) Defence wounds

PART B
EVIDENCE

QUESTION 2

Answer both (a) and (b)

- (a) Legislation is passed in your jurisdiction in an effort to regulate the growing scrap metal trade. The legislation in question, The Scrap Metal Act, provides that all traders in scrap metal require a licence from the Department of Trade.

In particular, the Act provides that:

“Anyone trading or otherwise dealing in scrap metal without a licence from the Department of Trade is guilty of a felony and upon conviction is liable to a sentence of a maximum period of imprisonment of five years at hard labour or a maximum fine of two million dollars.”

You are a junior attorney-at-law in the Office of The Director of Public Prosecutions/Attorney General in your jurisdiction. Recognizing that prosecutions under The Scrap Metal Act are imminent, the Director/Attorney General requests your opinion on the following issues:-

- (i) Whether the Act imposes any burden on the accused person and, if so, the nature of such burden.
- (ii) Whether any such burden, if imposed, violates the presumption of innocence in the constitution of your jurisdiction.

(b) Tony, a pedestrian, is injured when John's car collides into him. Tony files suit against John, alleging that John negligently drove his car onto the sidewalk and collided into him.

John, on the other hand, files a defence to the suit in which he denies that he was negligent and alleges that Tony was negligent, in that he stepped suddenly into the road.

Advise on the nature of any burden to be borne by John in relation to his defence and, if appropriate, the standard of proof.

QUESTION 3

Mary is an intelligent but troubled child of 13 years of age. She was convicted in the Juvenile/Children's court of your jurisdiction for the offence of shoplifting and sent by the court to a government care facility for convicted minors.

While at the care facility, she alleges to the supervisor of the dormitory that she was indecently assaulted. She said that a security guard, Peter, lured her to a storeroom on the premises with a promise to sell her cigarettes there. She alleges that, while there, he indecently assaulted her and threatened to kill her if she told anyone. She made this allegation against Peter to the supervisor the very night she said the indecent assault occurred.

The supervisor reported the matter to the police, who took statements from Mary, the complainant, and the dormitory supervisor. When questioned by the investigating policeman, John initially said that he had never met Mary in the storeroom, or anywhere else for that matter, and strongly denied the alleged indecent assault. Later, however, he admitted to the same policeman that he did meet her in the storeroom on the night to sell her cigarettes. He said that on the night in question Mary had made sexual advances to him, which he rejected. The investigating policeman submitted a statement to this effect and John is charged with indecent assault.

The charge against John is now set for trial before a jury.

Advise on the following:

- (i) Whether the trial judge should admit evidence of Mary's complaint to the dormitory supervisor and from whom. If so, indicate the evidential value of such a complaint.

- (ii) Whether the trial judge should give any special directions in the case, and if so, indicate the contents of such directions.

QUESTION 4

Celia, in a report and statement to the police, alleges that while at her home one night she was awakened by two armed intruders in her bedroom. She did not know the men before but she stated that she saw both their faces intermittently when they turned on a light in order to tie

her up. She said that it took about one minute for them to tie her up and thereafter the men left, after taking away her valuable jewellery.

A few hours after Celia's report, the police, acting quickly on information they received, went to the home of Stanley. There, acting on a search warrant, the police recovered jewellery later identified by Celia as belonging to her. That same day, Stanley also gave a statement under caution to the police admitting his involvement. The police then arrested and charged Stanley without holding an identification parade.

The police, a few weeks later, obtained information in relation to the other intruder. They then arrested Zane and held an identification parade at which Celia positively identified Zane. On the parade she said "I am fairly sure he is the one". There is no other evidence against Zane.

Stanley and Zane were later jointly charged and their case came up for trial before a jury. Stanley challenged the admissibility of his alleged caution statement in the absence of the jury as a preliminary point and the trial judge excluded it.

Now that the trial judge is about to hear the evidence in the presence of the jury he consults you, his clerk, for advice on the following issues:

- (i) whether a dock identification of Stanley is admissible;
- (ii) whether there is a basis to withdraw the case against Stanley and/or Zane from the jury at the close of the prosecution's case; and

- (iii) assuming that the case against both is not withdrawn, and that both Stanley and Zane give evidence of alibis, whether he should give special directions to the jury, and the nature of such directions.
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QUESTION 5

The Director of Public Prosecutions'/Attorney General's Department in your jurisdiction is in urgent need of prosecutors. In these circumstances the department is forced to recruit young graduates "fresh" from law school.

One such graduate is about to appear on his own for the first time in a murder case. The main witness for the prosecution is from a volatile community and will be giving evidence against the leader of a gang terrorizing the community. Indeed, apparently because of the fear pervading the community, the witness gave his statement to the police approximately a month after the murder in question.

You are a senior prosecutor in the department and the young graduate has come to you for advice in advance of the upcoming trial. He is particularly concerned that this vulnerable witness may be unable to recall important details, or may "shift" in the witness box, by significantly and intentionally deviating from his statement while giving evidence in examination-in-chief.

Summarize the advice you will give to the fresh graduate as regards:

- (i) refreshing the witness' memory before court, and while giving evidence;
 - (ii) any option open to him in relation to any deviation by the witness in examination-in-chief from his statement to the police; and
 - (iii) the scope of re-examination.
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QUESTION 6

John is charged with burglary and larceny arising from the theft of extremely valuable pieces of art from the national gallery of your jurisdiction.

The allegation against John is that he, acting alone, broke into and entered the gallery at night by drilling into the premises from an underground sewer system below it. It is further alleged that a witness saw a car licensed J 123 in the immediate vicinity of the gallery that night. The prosecution intend to prove that the car belonged to John.

Advise on the admissibility of the following items of proposed evidence:

- (a) Evidence of the investigating policeman that he saw and recognised John on the gallery's surveillance tape. On it, he saw John breaking and entering the gallery. However the surveillance tape was subsequently accidentally erased and is unavailable for the trial.

- (b) Evidence of the investigating policeman that he recovered from John's home blueprints of the layout of the sewer system and the gallery prepared by architects. He will produce the documents at trial.
- (c) Registration documents from the Tax Registry showing John as the owner of the motor car. These documents will be produced at trial by the Manager of the Registry, although he did not handle the registration personally.

QUESTION 7

You are a junior associate in a civil litigation law firm. Your firm represents an architectural firm in your jurisdiction. Your client was involved in the construction of a building for a university in the jurisdiction. The university was in the process of expansion to meet the increased demand for tertiary education.

In respect of a particular building on the university campus, your client was responsible for building an additional storey to the building for new classrooms. Unfortunately, as it turned out, the building collapsed under the weight during the construction process. Fortunately, this occurred in the summer break when no one was in the building.

The university brought suit against your client for negligence, alleging that it had failed to adequately assess the structural viability of expanding the building. Your client filed a defence alleging that its advice to expand was sound and that the contractor was at fault for poor

workmanship. The case was recently before the court for a case management conference when an order was made against the parties for standard disclosure.

- (a) Advise on the procedure to comply with an order for standard disclosure.

- (b) Advise on the treatment of the following documents in relation to that procedure:
 - (i) Correspondence between your client and your firm in relation to the suit.

 - (ii) A report to your client after the commencement of the suit. The report was prepared by an international architectural firm on the cause of the building's collapse.

 - (iii) Correspondence between your client and the university prior to the suit in which your client made bona fide attempts to settle the matter.

QUESTION 8

Roger and Barry are members of a gang and are jointly charged for wounding a rival gang member.

When confronted by the police, Roger answered questions under caution. Those questions and answers were recorded in writing by the investigating policeman. In that interview, Roger

admitted that he and Barry took part in an attack on the complainant thereby wounding him. Roger said in the interview that he did so under duress because Barry, a senior gang member, threatened to kill him and his family if he did not do so.

At the joint trial of Roger and Barry, the trial judge, during the prosecution's case, excused the jury to deal with the admissibility of Roger's interview. Roger's attorney-at-law indicated that he had no objection to the admission of the interview. Barry's attorney-at-law, on the other hand, applied to the trial judge to edit out from the interview all references to Barry on the basis of its prejudicial effect. The trial judge refused the application without giving reasons. When the jury returned the trial judge admitted the interview into evidence in its entirety during the investigating policeman's evidence.

After the close of the prosecution's case, Roger and Barry elected not to give evidence or call witnesses.

In his summing up to the jury, the trial judge gives the jury no directions on the evidential value, if any, of Roger's interview in so far as it asserts that he acted under duress and in so far as it incriminated Barry.

Both Roger and Barry are convicted and they seek advice as to whether they have good grounds of appeal, both in relation to the trial judge's ruling on the application to edit Roger's interview and his summing up to the jury generally.

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