

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

**LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS**

**LAW OF EVIDENCE AND FORENSIC MEDICINE**

**Monday, August 12, 1996**

**Instructions to Students:**

- (a) Time: 3½ hours
- (b) Answer **QUESTION 1** and **FOUR** others.
- (c) **Answer QUESTION 1 on a separate answer booklet provided.**
- (d) In answering any question, a student 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.

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**FORENSIC MEDICINE**

**QUESTION 1 (COMPULSORY)**

- (a) With regards to the medical examination of a rape victim, name THREE test samples usually taken for Forensic Lab investigation.
- (b) Blackening, burning or tatooning around an entrance gunshot wound would be consistent with what ranges?
- (c) Name THREE causes of asphyxia.
- (d) State the forensic importance of rigor mortis and liver mortis (lividity).

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**LAW OF EVIDENCE**

**QUESTION 2**

- (a) Barry is charged with murder of Scott, his business rival, and at his trial the prosecution is seeking to adduce in evidence a letter written by Barry to his lawyer in which Barry was seeking his lawyer's advice as to whether a charge of murder can be established even though the victim's head cannot be found. The evidence shows that this letter was written a week before Scott's headless body was discovered. He had been dead only a few hours at the time of the discovery.

Barry's lawyer refuses to produce the letter when requested on the ground that it is a privileged communication.

Can you support this stand?

- (b) Barry's former wife Mary has contacted the prosecuting attorney-at-law and indicates that she has evidence which is helpful to his case and which implicates Barry in similar activity.

Advise the prosecution as to the admissibility of this evidence.

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### QUESTION 3

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 4**

- (a) Dave is charged with taking away and using a motor car, contrary to a statute which provides as follows -

"Any person who takes or in any manner uses any motor car without the consent of the owner or person in lawful possession thereof shall be guilty of an offence".

At his trial the prosecution called evidence that Dave in fact drove away a vehicle belonging to another and closes its case. Dave, after a submission of no case to answer had been made unsuccessfully on his behalf, was convicted and wishes to appeal.

Advise him.

- (b) Peter is charged with murder arising out of the death of his friend James while they were together on a bird shooting outing. His defence is that his gun went off accidentally as he was cleaning it. The judge at his trial directs the jury in this way -

"If you conclude that the deceased died as a result of injuries from the gun which the accused was carrying, then the legal position is this: the killing of one human being by another is homicide, however he may be killed, and all homicide is presumed to be malicious and consequently murder, unless the contrary appears from the evidence. Once it is shown to a jury that somebody has died through the act of another, that is presumed to be murder, unless the accused can satisfy you that what happened was something less, whether by reason of accident or some other alleviating cause."

Peter is convicted and seeks your advice on his chances on appeal.

Advise him.

- (c) Advise on the standard of proof in a civil action for rescission of a contract on the ground of fraudulent misrepresentation.
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**QUESTION 5**

- (a) Khan was charged with murder. The evidence against him included the testimony of Barbara, a 15 year old girl, who, on the evidence, could have been found to have been involved with Khan in luring the victim to the place where he was attacked and robbed, and Taylor, who had, after the attack, assisted the accused to move the victim's unconscious body from the backyard of the accused's home to the river foreshore where he was later found dead.

Advise whether there are any special directions required on these facts.

- (b) Sharp is charged on an indictment containing three counts, arising out of an attempt to strangle his wife. At his trial, his wife was reluctant to give evidence against him, but was compelled to do so by the judge, whereupon he was convicted.

Advise Sharp on his chances on appeal.

- (c) During the course of his evidence as a witness for the prosecution in a criminal trial, Fisher indicates that he cannot now recollect an important detail, but states that "I am sure it would be in the statement I gave to the police".

Advise whether, and in what circumstances, he may be permitted to refresh his memory from his statement to the police.

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**QUESTION 6**

- (a) Art is charged with the murder of Bow. It is alleged that during an argument Art stabbed Bow in her chest. Bow, who was bleeding profusely, said in the presence of Art and X, a curious passerby who had run up to the scene, "Oh God, Art stabbed me and now I am dying". Art attempted to run away but was held by X and other villagers. Bow died soon after.

Advise on the admissibility of Bow's statement and any special directions which the judge must give to the jury.

- (b) In his business as a vegetable salesman, Hi has employed a delivery man, Tom, whose duty it was to deliver vegetables to customers and record the weight in his delivery book. Tom has recently died and Hi is afraid that he may not be able to collect payment for the vegetables supplied. Tom had been so efficient that he had recorded both the weight and prices of the vegetables delivered by him in each case.

Advise Hi on the admissibility of Tom's records in evidence should he (Hi) have to sue the customers.

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**QUESTION 7**

- (a) Wright was charged with having attempted to murder a girl by hitting her on the head and stabbing her. At his trial, the prosecution sought to tender in evidence a confession, Wright's counsel objected and a voir dire was held, during which the accused himself gave evidence. It was put to him in cross-examination that he had hit and stabbed the girl, intending to kill her, and he agreed. The judge excluded the confession on the ground of involuntariness, whereupon counsel for the Crown informed the court that he proposed to call a witness to prove the accused's admission on the voir dire.

As counsel for the accused, what would be your response to this application?

- (b) Jane, who was charged with murder, was convicted substantially on the basis of evidence of a confession made by her. The confession was made to the police immediately after she had been in custody for more than 48 hours and after her husband had said to her: "Why don't you tell the truth about everything? If you tell the truth, you will feel a lot better...."

Advise on the admissibility of this confession. Would it make a difference if there had been an interval of 3 hours between her husband's statement and Jane's confession?

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**QUESTION 8**

Shah is charged with the murder of his two-year old child. Upon his arrest last December 1, Constable Jones informed Shah that Shah's wife had said that he threw the child on the floor and banged his head on the wall, whereupon the child became unconscious. Shah remained silent.

Shah was kept in custody pending the post mortem examination and report which was obtained by the police on December 3. Shah was then charged. One of the items of evidence upon which the prosecution will be relying is a statement given by Shah to the police on the night of December 2. In the statement Shah said that he did have the child in his grasp but it fell on the concrete floor by accident and was injured. Prior to giving this statement, Shah had been questioned in the chargeroom by his older brother, Scott, in the presence of Constable Jones. Constable Jones had said nothing when Scott had urged Shah to "tell the truth, it would be better for you".

Shah's wife is not called as a witness.

Advise the prosecution as to the admissibility in evidence -

- (i) of what Constable Jones said to Shah at the time of arrest;
  - (ii) of Shah's out-of-court statement and its evidential value.
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