

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTAL EXAMINATIONS, 2000

LAW OF EVIDENCE AND FORENSIC MEDICINE

(Friday, August 11, 2000)

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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

**PART A**  
**FORENSIC MEDICINE**

**QUESTION 1 - (COMPULSORY)**

- (a) What is the difference between a laceration and an incised wound?
- (b) Name THREE causes of asphyxia.
- (c) The Forensic Lab Report on a vaginal smear done on an alleged rape victim showed the presence of spermatazoa. Is this conclusive evidence of rape?
- (d) The defence argued in a murder trial that the defendant was being attacked by the deceased man with a knife when the defendant shot him in self defence. When questioned by the prosecution, the defendant stated he was standing about 5 feet from the deceased at the time he fired. The doctor gave evidence that an entrance gunshot wound was on the face of the deceased, surrounded by a wide area of blackening (soot).
- (i) What is the range of fire?
- (ii) Did the doctor's evidence support the defendant's story?
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## PART B

### EVIDENCE

#### QUESTION 2

- (a) At his trial on a charge of murder John raises the defence of insanity and his attorney-at-law calls a psychiatrist in support of this defence. The trial judge in the course of summing up to the jury says:

"the accused has raised the defence of insanity. If you have any doubt on the matter you need not believe him. The accused must prove that he was insane and he must satisfy you to the extent that you feel sure of this."

Advise John as to whether this direction is proper.

- (b) A statute from your jurisdiction prohibits the staging of demonstrations in public without a permit from the Commissioner of Police. Pete, the chairman of a human rights group called Citizens for Human Rights, organizes and stages a demonstration. Pete is arrested and the Crown/State calls evidence to prove the demonstration but closes its case without calling evidence to prove that Pete and the group did not have a permit. Pete makes an unsuccessful no case submission, calls no evidence and is convicted. He appeals the conviction.

Advise on Pete's chances of success on appeal.

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**QUESTION 3**

- (a) Robert is nine years old. He is called as a witness by the Crown in a criminal trial. The judge embarks on a *voir dire* to determine whether to allow Robert to give sworn evidence. During the course of the *voir dire* Robert says that "no talk of God is permitted in our home". The judge is, however, very impressed with Robert's level of intelligence and allows him to give sworn evidence.

Advise on the correctness of this ruling.

- (b) John, Gary and Tommy are residents of Chancery Hall of the National University. Together with other students, they decide to engage in a fight against resident students of Bovine Hall of the same university. During the course of the fight, John pulls a knife and fatally stabs one of the rival students. Gary and Tommy are called as witnesses for the prosecution in a case of murder against John.

Should the trial judge give special directions to the jury with respect to the evidence of Gary and Tommy? Give reasons for your answer.

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**QUESTION 4**

- (a) During the course of a civil trial for damages for negligence, Doctor Jones, the plaintiff's doctor, is given permission, while giving evidence, to refresh his memory from his notes. He does so from a portion of the notes. Later, while Dr. Jones is being cross-examined, the defendant's attorney-at-law

calls for and inspects the notes. The defendant's attorney-at-law then proceeds to cross-examine the doctor on the entirety of the notes.

- (i) Was the defendant's attorney-at-law entitled to call for, inspect and cross-examine on any portion of the notes beyond that used by the doctor to refresh his memory?
  - (ii) If the answer to (i) above is yes, what can the plaintiff's attorney-at-law do in response?
- (b) John was charged, tried and acquitted of the offences of disorderly conduct and obstructing a police officer in the course of his duty. John sues the police officer in question and the Attorney General arising out of the acquittal. He sues for false imprisonment, malicious prosecution and assault.

John's case is that during his detention in custody on the charge, the police officer assaulted him by beating him without justification. John gives evidence and during the course of cross-examination by Mr. Cochran, attorney-at-law, representing the Attorney General's Department, Mr. Cochran suggests to John that his evidence of the assault is a "figment of his imagination", and a recent fabrication to boost his claim for damages. John denies this.

John's attorney has in his possession a statement, given soon after the alleged assault, from John, complaining of the assault.

Can John's attorney use this statement and if so, how and when?

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**QUESTION 5**

- (a) Jay is charged with the murder of his wife, Mary, and at his trial, the prosecution seeks to adduce in evidence a letter written by Jay to his attorney-at-law in which he sought his 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 Mary's headless body was found. She had been dead for only a few hours at the time of the discovery.

Jay's attorney-at-law refuses to produce the letter when requested to do so, on the ground that it is a privileged communication.

Advise on whether he is correct.

- (b) During the course of his trial for robbery, Michael writes a note meant for his attorney-at-law, in which he admits an important allegation in the Crown's case.

Crown Counsel, through no impropriety on his part, comes into possession of the note. While Crown Counsel is cross-examining Michael, Michael denies the allegation in question.

Can Crown Counsel use this note in cross-examination and if so, how?

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**QUESTION 6**

- (a) Walker is charged for shop breaking and larceny. During the course of the Crown's case the Crown Counsel seeks to tender into evidence a confession allegedly made by Walker. Walker's attorney-at-law, Mr. Darden, contends that his client was forced to sign the confession after a severe beating by the police. The trial judge holds a *voir dire* in the absence of the jury and finds that it was given voluntarily.

The trial resumes and the confession is admitted into evidence. Mr. Darden attempts to examine Mr. Walker about the circumstances under which he signed the confession and the beating by the police.

The trial judge rules that such questioning will not be allowed. He states in his ruling "I have already ruled on the admissibility of this confession. The allegations you and your client make about the circumstances under which it was taken are irrelevant for the jury's consideration. I will therefore not allow any further questions along these lines".

Advise on the correctness of this ruling. Give reasons for your answer.

- (b) Sean is charged for larceny and is being tried for this offence. The prosecution seeks to tender in evidence a confession allegedly signed by Sean. Sean's attorney-at-law maintains that it is the first time his client is seeing the confession and that the signature on it purporting to be that of his client is forged.

Is it necessary for the trial judge to embark on a *voir dire* as to the admissibility of the confession in these circumstances? Give reasons for your answer.

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**QUESTION 7**

Larry is charged on an indictment containing two counts for incest, with his two daughters. There is a count in relation to each of his daughters. The Crown's case is that the incest in relation to each daughter took place over a long period of time, involved the use of force and threats, and in both cases Larry paid for abortions for his daughters. There is, however, no evidence of striking similarity in the commission of the offences.

Larry's attorney-at-law applies to the court to have the counts relating to each of the daughters tried separately on the basis that the evidence on each count of the indictment is inadmissible in relation to the other.

Advise Larry's attorney-at-law on the chances of success of this application.

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**QUESTION 8**

- (a) Tracey is charged for murdering her husband. Her case is that while she was in the kitchen with him and during the course of an argument, he boasted that he had had several affairs. She contends that she lost control and stabbed him with a kitchen knife. At her trial, Tracey proposes to call as a defence witness, a houseguest who will say that she was present and heard the deceased boast of the affairs.

Crown Counsel objects to any evidence of what the deceased said on the basis that it is hearsay.

Does this objection have merit? Give reasons for your answer.

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- (b) Brian is charged with the murder of Stephen. It is alleged that during an argument, Brian brandished a firearm and shot Stephen in the chest. A passerby rushed to the assistance of Stephen who was bleeding badly and Stephen said to him, "Brian shot me and I know I am dying". Stephen died shortly after.

Advise on the admissibility of Stephen's statement.

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