

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2017

LAW OF EVIDENCE AND FORENSIC MEDICINE

(????, AUGUST, 2017)

**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. Erasable pens are not allowed.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

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

**QUESTION 1**

**COMPULSORY**

**Answer both (a) and (b)**

- (a) Write short notes on each of the following:
- (i) Incised wounds
  - (ii) Adipocere formation
  - (iii) Entry and exit gunshot wounds; and
  - (iv) Rigor mortis
- (b) Briefly outline the medico-legal significance of each of the following:
- (i) The presence of ligature marks on the neck of a deceased
  - (ii) Contusions
  - (iii) Cadaveric spasm
  - (iv) Livor mortis
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**PART B**

**EVIDENCE**

**QUESTION 2**

Stephen was being tried for murder. A witness for the prosecution had, shortly after the murder in question, given a statement to an investigator hired by Stephen's defence attorney-at-law.

During the trial, Stephen's attorney-at-law attempted, using leading questions, to cross-examine the prosecution's witness to prove that aspects of her statement to Stephen's investigator were inconsistent with her evidence at trial, and that aspects of her evidence were not mentioned in her statement. The witness admitted giving the statement, but asserted that she only did so because she was intimidated by the investigator. In response to the witness's assertion, the trial judge, in the presence of the jury, exclaimed:

*"I have deep concerns about this line of cross-examination. You are leading the witness in relation to a statement she said she gave in clearly questionable circumstances. Indeed, although cross-examination may be permissible on a witness's previous statement to the police, it is impermissible on a witness's previous statement to someone else. Also it is impermissible to cross-examine a witness as to omissions from her statement. I rule against any further cross-examination on this previous statement."*

Later in the trial, when Stephen's attorney-at-law attempted to call his investigator to give evidence of the contents of the witness's statement, the judge also ruled against this.

Stephen is convicted and seeks your advice as to whether he has grounds of appeal. Advise him, giving reasons.

**QUESTIONS 3, 4 and 5 are based on the following facts:**

Tony is charged on a multi-count indictment for rape and incest of his two stepdaughter, when they were 11 and 12 years old. There are separate counts in relation to each stepdaughter.

It is alleged, that after Tony had married the children's mother, and unknown to her, he committed the acts of rape and incest in their home, over a period of time. He allegedly did so by threatening the children to leave the family on their own without any support. The abuse came to an end when the mother witnessed Tony in the act of committing the offence with one of the children and made a report to the police.

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**QUESTION 3**

Advise on:

- (i) the competency and compellability of the children to give evidence for the prosecution; and
- (ii) the competence and compellability of the wife to give evidence for the prosecution.

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**QUESTION 4**

Assume on the facts above that the charges against Tony come up for trial. At that time the trial judge exclaims to the prosecutor:

*“Counsel, I have examined the allegations in this case and the indictment. There is no indication of any “striking similarity” in this case concerning the manner in which Tony is alleged to have committed the offence against each stepchild. In those circumstances the evidence of each child is not admissible in relation to each*

*other. I must order separate trials whenever evidence of a victim on any multi-count indictment is not cross-admissible in relation to the other victim”*

As the prosecutor in the case, how would you submit in response? Give reasons.

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### **QUESTION 5**

Assume on the facts above that one of the stepchildren reported the rape by Tony to her teacher. She did so the day after he first committed the offence.

The teacher, however, did not at the time, give a statement to the police because she doubted the child and did not wish to be involved. The teacher referred the child to the guidance counsellor and assumed the child would see the counsellor. The teacher, shortly after the report left the school for another job. She only gave a statement to the police as to the report to her by the child, after she heard of the charge against Tony.

- (a) Is evidence of the report by the child to the teacher admissible, and if so, what are the conditions of admissibility?
  - (b) Should the trial judge, at trial, give special directions in relation to the evidence of each child (whether or not the offences are joined on one indictment)?
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### **QUESTION 6**

James and Peter travelled to your jurisdiction for the local carnival. They had rented a car to travel from party to party. One night, they were stopped by police who discovered a quantity of cocaine in the glove compartment. They were jointly charged for possession of cocaine.

When the matter comes up for trial before a jury, the prosecution proposes to rely on a written statement under caution by James to the police. In effect, James had admitted in the statement that the cocaine was his and that Peter had known nothing about it.

James's defence attorney-at-law intends to challenge, on a *voir dire*, the admissibility of James's statement under caution, on the basis that it was not voluntarily given.

- (a) Outline the various stages leading up to and during the *voir dire*.
  - (b) If the statement under caution is admitted into evidence, does it have any evidential value in relation to Peter? Give reasons.
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### **QUESTION 7**

Simon, a security guard, was charged for the offence of larceny/theft.

The prosecution's case at trial was that Simon stole firearms from the security company to which he was employed.

Simon elected to give evidence in support of his defence of duress. He intended to give evidence that gunmen had threatened to kill him and his family unless he stole the firearms for the gunmen. The trial judge, however, ruled against the admissibility of evidence of what the gunmen told Simon. The trial judge ruled that the evidence was inadmissible hearsay.

The trial judge also ruled against the admissibility of evidence from Simon, to the effect that he had no previous convictions. In his ruling, the trial judge stated that good character evidence was relevant to sentence, only.

Simon was convicted and now seeks your advice as to an appeal.

Advise Simon, giving reasons, as to whether he has grounds of appeal on the following:

- (i) the judge's ruling on the hearsay point; and

- (ii) the judge's ruling as to the inadmissibility of the evidence of the absence of previous convictions on Simon's part, and whether, if admissible, such evidence attracts special directions.
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### **QUESTION 8**

The Evidence Act in your jurisdiction contains a provision concerning computer printouts which requires proof that the computer in question was in proper working order, as a condition for the admissibility of such computer printouts.

- (a) Roger was the mortgagor in respect of certain commercial premises which he used as security for a loan from High Rollers Bank, the mortgagee.

Roger brought a claim in the High/Supreme Court against High Rollers Bank in which he alleged that the bank wrongfully exercised its power of sale under the mortgage.

During the trial, the judge ordered the bank's witness, a manager of the bank, to produce computer printouts of the balance due under the mortgage. The witness complied with the order and the printouts were admitted into evidence, without objection or cross-examination on them by Roger's attorney-at-law.

At the conclusion of the trial, the judge gave judgment in favour of the defendant, High Rollers Bank.

Roger seeks your advice as to whether he has a good ground of appeal against the judge's admission of the computer printouts into evidence.

Advise Roger.

- (b) A claim in your High/Supreme Court comes up for trial in your jurisdiction. The claim arises from a motor vehicle collision involving two motor vehicles, one owned and driven by Peter, and the other owned and driven by Scott.

In the statements of case, the claimant, Scott, alleged negligence against Peter as the cause of the collision. Peter, the defendant, in turn, alleged negligence against Scott as the cause of the collision.

Advise:

- (i) what burden(s) if any, and standard(s) of proof, if any, will be borne by Peter as to his allegation of negligence against Scott? and
- (ii) what should the trial judge's decision be at the conclusion of trial, if he cannot decide on the cause of the collision?

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**END OF PAPER**