

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR EXAMINATIONS, 1996**

**LAW OF EVIDENCE AND FORENSIC MEDICINE**

**Wednesday, May 22, 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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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**FORENSIC MEDICINE**

**QUESTION 1 (COMPULSORY)**

- (a) An accused man is charged with having sex with a 15½ year old girl. In his evidence, the man stated that the girl consented to this and actually visited his apartment without his invitation. However, the girl stated in her evidence that she was forced to have sex after being threatened with a knife.
- (i) What is the age of consent in your jurisdiction and is this a case of rape?
- (ii) With regards to the medical examination of the girl, what tests should be carried out?
- (b) Is death from drowning classified as natural or unnatural death?
- (c) What is the difference between an incised wound and a cut?
- (d) "Spiderman" was allegedly shot and killed during a shootout with the security forces. The Investigator's report states that "Spiderman" and his gang were shooting from a hideout located about 30 ft. from where the security forces were. When the shooting stopped, the deceased body was found with a gunshot wound, while the other gunman escaped. The post mortem report states "that an entrance gunshot wound, surrounded by an area of gunpowder stippling .was noted to the right temple region of the head and a large calibre, copper jacketed lead bullet was recovered from the brain".

Based on the post mortem finding -

- (i) what was the range of fire?
  - (ii) is this range consistent with the investigator's report?
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### LAW OF EVIDENCE

#### QUESTION 2

- (a) Yves is charged with driving his truck on a public road without being the holder of a driving permit, contrary to the relevant statutory provisions.

Advise on the burden and standard of proof.

- (b) Wendy is charged with wounding Greg, 16, son of her next door neighbour. Jean, Greg's mother, is a witness for the prosecution. During cross-examination, it is put to Jean that she -
  - (i) has only recently claimed that the wounding incident was deliberate on Wendy's part and that she saw that it was an accident;
  - (ii) has schooled Greg to give false evidence because she is on bad terms with Wendy.

Jean denies both.

What should the prosecution, who has evidence to rebut (i), do?

Can the defence call a witness to prove (ii)?

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**QUESTION 3**

Silva, a 13 year old girl, is allegedly the victim of rape by Joe. Medical evidence confirms that sexual intercourse has taken place. The prosecution calls Silva as a witness at the trial.

- (i) What is the law with respect to Silva's competency as a witness?
  - (ii) In his summing up, what special directions must the judge give to the jury with respect to Silva's evidence?
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**QUESTION 4**

Mortimer was convicted of having murdered a young woman, Miss Oates, by deliberately driving his motor car at her while she was riding a bicycle and knocking her down. Evidence was admitted that on the day before the offence he had separately knocked down two other women cyclists with his car and assaulted each; that on the day following he had knocked down another woman cyclist and stolen her handbag; and also that he had driven straight at three different parties of police officers who had tried to stop him. His defence was that the collision with Miss Oates had been accidental.

On appeal, he wishes to challenge the admissibility of the above evidence and seeks your advice.

Advise him.

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**QUESTION 5**

(a) Mr. Manley Michael, the proprietor of the "People's Tavern", had a contract with the local brewery under the terms of which he had covenanted to purchase and sell only their product, "Blue Label" beer. For its part, the brewery company undertook to supply at all times "good quality" beer. The company brought an action against Mr. Michael for breach of covenant, alleging that he had in fact for some time been selling an imported product ("Caribbean beer") and Mr. Michael counterclaimed alleging a breach by the company of its obligation to supply beer of good quality. Mr. Michael proposes to give evidence himself of the following -

- (i) six letters received by him from customers complaining of the quality of the beer being sold in the tavern; and
- (ii) three occasions on which, after being told that only "Blue Label" beer was available in the tavern, prospective customers had declined to have it and had ordered "Dragon" stout instead.

Advise on the admissibility of this evidence.

(b) Dennis is charged with larceny of a motor car. His defence is a claim of right, in support of which his counsel seeks to put in evidence a registration booklet in which Dennis is described as the owner of the car in question. The prosecution objects.

Advise on the admissibility of the booklet.

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**QUESTION 6**

Mrs. James and her husband were in their bedroom at home watching television one night when three men burst into the house demanding money. Mrs. James was terrified. When her husband resisted he was shot dead and then the men left. At the time illumination was from the television screen and the reflection of outside security lights.

Two months later, Mrs. James attended an identification parade comprising nine men. She picked out Ben as one of the culprits. Ben was one of only two men on the parade who appeared to be of 'mixed' descent. Mrs. James had known Ben for some ten years before and had seen his face for a few seconds at the time of the incident. Ben who is being tried for murder puts forward a defence of alibi.

What are the legal issues of identification which the trial judge must bear in mind?

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**QUESTION 7**

Davis, Roper & Co., a firm of attorneys-at-law, have acted generally for many years for Buildings & Associates ("Buildings"), a firm of building contractors. Buildings was the developer of a residential complex of 10 "ranch style" four-bedroom houses, 10 three-bedroom townhouses and 10 two-bedroom townhouses. Davis, Roper & Co. were involved from the very outset in

applying for planning permission, drawing up the contracts and giving general advice. At the completion of the project, Buildings, under a specific clause in the contract, imposed a 30% escalation charge in the original price upon the purchasers. Some purchasers, who were unable to complete, accepted a refund of their deposits and dropped out altogether, while others paid up, but immediately initiated proceedings against Buildings to dispute the validity of the escalation charge. The purchasers now seek discovery of the following documents from Davis, Roper & Co. -

- (i) Buildings' original instructions to Davis, Roper & Co. with regard to the project;
- (ii) the Quantity Surveyor's reports upon which the contract prices of the houses had been initially priced;
- (iii) the Quantity Surveyor's report upon which the escalation charge was based;
- (iv) a further Quantity Surveyor's report, commissioned by Davis, Roper & Co. on Buildings' behalf, after the escalation charge had been imposed and Attorneys representing the purchasers had written disputing the charge and threatening to sue.

Davis, Roper & Co. now seek your advice on the application for discovery.

Advise them.

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**QUESTION 8**

- (a) James and John were jointly charged for receiving a quantity of stolen calculators. John gave evidence alleging that James alone had had control and possession of the bag in which the calculators had been found. James' counsel then sought to cross-examine John on his previous criminal record, but was stopped by the judge who said he did not see any point in that, since it appeared to be "a very clear case" to him. Both were convicted and James seeks your advice on an appeal.

Advise him.

- (b) Junior is on trial for larceny. He has 6 previous convictions - 4 for offences involving dishonesty, 1 for common assault and 1 for possession of marijuana. Advise the prosecution in the following situations -
- (i) where Junior impugns the character of the main prosecution witness and gives an unsworn statement from the dock in which he asserts his own good character;
  - (ii) where he gives sworn evidence, but does not attack the prosecution witnesses or assert his own good character in any way.
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