

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATION , 1997

**LAW OF EVIDENCE AND FORENSIC MEDICINE**

(Monday, May 19, 1997)

**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) The laboratory reports submitted to the court for both rape and carnal abuse cases show the presence of Semen and Acid Phosphatase. Is this convincing evidence in both cases that the offence took place?
- (b) Name **THREE** body fluids from which Deoxyribonucleic Acid can be identified.
- (c) In a paternity case, the laboratory report for the mother, alleged father and child showed all three to be blood group O positive. Is this convincing evidence that the man is the father of the child?
- (d) You are employed at the D.P.P's. office. A police investigation file is submitted to you for your ruling with regard to an accidental police shooting. The evidence submitted is that a prisoner was trying to disarm the officer of his service revolver in a very close struggle when the prisoner was accidentally shot and died. The post mortem report states that an entrance gunshot wound is noted on the abdomen of the deceased without gunpowder deposition. There was also no evidence of gunpowder on the deceased's clothing. What is your opinion?

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**LAW OF EVIDENCE****QUESTION 2**

- (a) Under the provisions of a new statute in your jurisdiction, it is an offence "to use a motor car without the consent of the owner". Advise the Crown/State on the burden of proof in prosecuting an offence under this provision.

- (b) On Dave's trial for murder, his defence was self-defence and the learned trial judge directed the jury in this way -

"The force used by the accused must not be by way of revenge and the prosecution must prove - not the prosecution - the accused man must satisfy you that he honestly believed that the force used by him was necessary to prevent or resist this attack when he says it was imminent upon him.."

Dave is convicted and seeks your advice on his chances on appeal. Advise him.

- (c) In the course of his summing up a criminal trial, the judge had this to say of the standard of proof -

"There is no particular magic about the way you've got to consider it, no special rules, you consider it in an ordinary common sense manner and in the way you would consider the more serious matters which come up for consideration and decision in your own lives and if considering it in that way ... you come to a feeling of comfortable satisfaction that the accused is guilty, then you should find him so guilty."

Advise on the correctness of this direction.

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### QUESTION 3

- (a) Franco, who had a criminal record, was jointly tried with Caparo for receiving stolen goods. Caparo had no criminal record. Franco gave sworn evidence implicating Caparo by alleging that it was he who had had sole control and possession of the carton allegedly containing the stolen goods. Caparo's

counsel then sought to cross-examine Franco on his record, but was prevented from doing so by the judge, who stated that in his view "the prejudicial effect of such questioning would greatly exceed its probative value". Both accused are convicted and Caparo seeks your advice on his chances on appeal.

Advise Caparo.

- (b) Peter is charged with stealing US\$3,000 from John. In his defence Peter sets up a claim of right, asserting that the money is the amount owed to him by John as his share of the proceeds of a shipment of ganja to Miami. Peter has several previous convictions for drug offences and stealing.

Advise on what use can be made by the prosecution of Peter's criminal record -

- (i) where he makes an unsworn statement from the dock;
- (ii) where he gives sworn evidence;
- (iii) whether in (ii) above any distinction is to be drawn between the conviction for drug offences and the others.

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#### QUESTION 4

- (a) "Whether or not Calcraft v Guest (1889) 1Q.B. 759 and Lord Ashburton v Pape [1914] 2 Ch. 463 are reconcilable at a technical level, they seem to be fundamentally in conflict ... The client's success should not depend on the date at which he found out that he was the victim of a wrongdoer; it should not depend on the chance of whether there is time to institute independent proceedings which may add to costs." (Heydon, "Evidence: Cases and Materials", 1975).

Comment on the above, with reference to subsequent decisions.

At A's trial for manslaughter, his counsel in cross-examining the main witness for the prosecution, has suggested to him that it is not true that he has known A for over 10 years, as he has testified, but for no more than 10 months. A passes up the following note to his counsel -

"You've got it wrong: he has known me for over 10 years - I wouldn't pursue it any further, if I were you".

As a result, counsel is about to move on to another area, when the trial judge, who has seen the passing of the note, demands to see it. Counsel requests a brief adjournment and consults you as to the legal position.

- (i) Advise him.
- (ii) Would it make a difference if the note had been left carelessly on the bench by A's counsel and had come into the possession of counsel for the Crown/State?

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### QUESTION 5

Jay is charged with two counts of larceny which are joined in one indictment on the basis that they involve "similar facts". The similarities alleged are that the offences were committed against elderly women, Kay and Louise (who do not know each other), on whom a confidence trick was employed and the offences were committed while the victims were alone in their homes during the day. In each case the victim was told by the thief that he was selling smoke alarms in support of the Firemen's Fund. No smoke alarms were delivered although they were paid for.

In each case the victim saw the thief inside of her home for some 5 - 10 minutes and had not known him before. Kay wore strong glasses. She nevertheless picked out Jay at an identification parade three weeks after the incident at her home. Louise failed to identify anyone although the parade was two weeks after the incident at her home.

- (i) Should the cases be tried together so that the evidence in each case helps to prove the other?
  - (ii) What special directions, if any, are required of the trial judge?
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### **QUESTION 6**

Max is charged with the rape of Nora after an office party. His defence is consent and his lawyer cross-examines Nora alleging that on previous occasions she had gone out with Max when they had held hands and kissed. Nora denies this and said she never knew Max before that date. It is recorded in her deposition taken at the preliminary enquiry that Nora had said she had seen Max at a couple of office functions before. The defence also contends that Nora only "cried rape" because her mother was angry with her for arriving home late. Pam, Nora's best friend, can however testify that Nora came crying to her the night of the party before she went home and told her Max had "forced himself" on her.

What use can be made of the following -

- (i) the statement from John that he had seen Nora and Max out on a date two weeks before the incident;
  - (ii) Nora's deposition at the preliminary enquiry;
  - (iii) the statement of Pam?
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**QUESTION 7**

- (a) Jean, Clayton and Andrew were jointly charged with having murdered a man named Kent, who had been tied up and badly battered about the face and head before being strangled. They were intercepted at a hotel at 3.00 o'clock in the morning after the murder and taken to Police Headquarters, where they arrived at 3.30 a.m. They were separately interrogated for 3 hours and at 7.00 a.m. they were placed together in a holding cell with no seating. At about 9.00 a.m., Clayton started to shout through the bars and when the Sergeant-in-charge arrived Clayton said, "we need to get out of here, I'll make a statement now". The other two said nothing, but the Sergeant immediately separated them again and all three ultimately made full confession statements.

Advise on the procedure to be followed at the trial of Jean, Clayton and Andrew when objections are taken to the admissibility of these statements and on the issue of their admissibility generally.

- (b) Assuming that in (a) above the confessions are ruled inadmissible, what use may the prosecution make of a bloody hammer subsequently found in the hotel room from which the accused had been removed, as a result of information supplied by one of them in her confession?

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**QUESTION 8**

Puna is charged with the murder of Mam allegedly by strangling her with a rope at her business place. Is the following admissible in evidence -

- (a) that Rex, who was walking past Mam's business place at the relevant time, heard a voice shouting, "What are you doing with that rope, Puna?";

- (b) that Sham, when dying of leukemia two months after the killing, confessed that he was the person who had killed Mam;
  - (c) that Mary had told her friend Conrad that Mam had been strangled before the police had discovered Mam's body and before her death had become generally known.
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