

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR EXAMINATIONS, 1998**

**LAW OF EVIDENCE AND FORENSIC MEDICINE**

**( Monday, May 18, 1998)**

**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 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.

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

**QUESTION 1 (Compulsory)**

- (a) A client came to you seeking legal advice with regards to obtaining some form of workmen's compensation from his previous employer, due to ill health, which he blames on his previous occupation. When questioned, he presented a medical certificate stating that he has been diagnosed with the lung disease, **Anthracosis.**

What was the client's occupation?

- (b) John Closet, the name which appears on this transvestite's legal birth certificate, allegedly had sex change surgery, and now wishes to be called Mary Closet. He/She complained to the police of being raped by a man known as Dick, who was subsequently arrested and charged.

As the appointed Crown / State Counsel in this case what is your opinion of the rape charge?

What medical reports would you request to help you in your decisions to prosecute?

- (c) The laws against drunken driving are now in effect in most countries.

Name two tests now being employed by the police to detect the level of alcohol in the body.

- (d) The post mortem report states that three entrance gunshot wounds are noted on the body of the deceased, each having the following observations-

**ENTRANCE 1:** Having a marginal abrasion but no gunpowder deposition.

**ENTRANCE 11:** Surrounded by an area of blackening (soot) up to 3cm. wide.

**ENTRANCE 111:** Surrounded by an area of tattooing up to 7cm. wide.

Since all the wounds were inflicted by a revolver, please state the range of fire for each.

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## **QUESTION 2**

Gemma is one of two eyewitnesses in a case in which Buck is charged with wounding. The preliminary enquiry having been completed, Buck is now being tried in the Supreme / High Court. After Gemma has taken the oath, she then informs the prosecutor that she cannot remember what happened on the day in question.

- (i) As the prosecutor what would be your next step to facilitate Gemma giving evidence?
- (ii) Assuming that after your efforts at (i) Gemma now says she did not see Buck do anything because she left for home before anything happened, but at the preliminary enquiry she had said she was present when Buck stabbed the victim.

What is your next course of action?

- (iii) Would it make any difference to your answer if Buck were Gemma's husband and she had been the victim of the attack?
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**QUESTION 3**

Khadar is being tried for the murder of his girlfriend Lovi. He was found early one morning by the police hiding in a beach house at Mayaro. On entering the beach house, Constable Thomas shouted out to Khadar that he was wanted for the murder of his girlfriend Lovi, who had been shot to death. Khadar said nothing and was arrested and taken to the police station. When the police vehicle pulled up at the police station, Lovi's brother Tony, ran up to Khadar and asked "Why did you shoot my sister?" Khadar said nothing but looked up at the sky.

Later that morning Khadar was questioned by police officers but remained silent. Sometime around 4:00 p.m. when Khadar was sitting in the chargeroom his mother visited him to bring food and drink. She said to Khadar, "Tell them what happened, it will make it easier." About an hour later Khadar called out to Constable Thomas and said that he was ready to confess and gave a confessional statement.

- (i) Can Khadar's silence in response to the accusations constitute an admission in each case?
- (ii) The defence intends to object to the statement being admitted as evidence. Advise as to the likelihood of success of the objection.

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**QUESTION 4**

Anna was walking along Harris Street one day around noon when she was attacked by a man who forced her into a nearby abandoned house at knifepoint. The man then proceeded to rape her after which he threatened her should she tell anyone. The entire incident lasted for about half an hour.

Anna immediately made a report to the police and gave a detailed description of her attacker. The next day, Tommy, who matches the description is arrested. He refused to be placed on an identification parade but was nevertheless charged with the offence. At the preliminary enquiry Anna pointed him out as her attacker as he sat in the dock.

Tommy is now being tried at the Assizes Circuit Court for rape and his defence is mistaken identity.

- (i) If the defence makes a no case submission on the basis that the identification is of a poor quality, how would you respond as prosecuting counsel?
- (ii) Assuming that the case goes to the jury, what special directions must the judge give to the jury in his summing up in respect of Anna's evidence?
- (iii) Would it make any difference to your answer at (ii) if after Tommy refused to be placed on an identification parade, he was confronted with Anna who there and then identified him as her attacker?.

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#### QUESTION 5

- (a) Dane, Paul and Patrick are jointly charged with armed robbery. Dane's defence is that he was forced by Paul and Patrick to participate in the robbery as the driver of the escape car and that, had it not been for their

threats, he would not have been at the scene of the crime at all. The trial judge directs the jury in this way -

"Duress is a matter of defence and the onus of proving it is on the accused".

Dane is convicted and seeks your advice on his prospects on appeal.

Advise him.

(b) Section 19 of the Motor Car Act 1990 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."

Advise on the burden and standard of proof on a prosecution under this section.

(c) Peter, an executive with a large commercial bank, is dismissed after the discovery of several irregularities with regard to certain accounts managed by him. After a full investigation, he is sued by the bank for fraudulent conversion of \$2 million.

Advise on the standard of proof.

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**QUESTION 6**

- (a) Apex Company Ltd. sought the advice of Mrs. Jane Cameron, Q.C., a well known tax lawyer, on the tax implications of a joint venture that it was contemplating entering into with Pinnacle Inc., a Delaware Corporation. Prior to rendering her opinion, Mrs. Cameron - with the consent of Apex - wrote to Pete Mitchell & Co., Apex's auditors, seeking clarification of certain tax losses that had been carried forward in Apex's books from previous years.

In her letter to the auditors, Mrs. Cameron set out what she described as her "preliminary view" of the matter. In due course, having received a response from Pete Mitchell & Co., she rendered her formal written opinion to Apex, partially as a result of which the company did not in fact proceed with the joint venture.

Several months later, during the course of a tax audit of Apex's books, Apex refused to disclose to the Commissioner of Income Tax both Mrs. Cameron's opinion and the copies of the correspondence in its files between her and the auditors. The Commissioner seeks your advice as to whether this is a position that Apex can properly take.

Advise the Commissioner.

- (b) Snooks & Co. are Attorneys-at-law, acting for the plaintiff in a case of very serious personal injuries. During the course of some exploratory settlement discussions with Diamonds, Attorneys-at-law for the defendant, Snooks & Co. sent in error to Diamonds a highly confidential report from one of the plaintiff's doctors querying the seriousness of his injuries. When

advised of the error, Diamonds refused to return the report, stating in a letter that "this is obviously very relevant material".

- (i) Advise Snooks & Co.
- (ii) Would your advice be any different if the fact that Diamonds had come into possession of the report was not discovered until an attempt was made by the defendant's counsel to tender the report in evidence at the trial?

### QUESTION 7

- (a) Pete is charged with murder. He pleads not guilty and his instructions to his counsel are that he acted in self-defence. He has several previous convictions for offences involving violence.

Advise what use may be made by the prosecution of his criminal record in each of the following situations -

- (i) Where Pete makes an unsworn statement from the dock in which he asserts that he is a person of good character;
  - (ii) where his counsel cross-examines the main prosecution witness at length and suggests that he is "a jailbird and a notorious perjurer" and Pete then gives sworn evidence.
  - (iii) In (ii) above would it make a difference if Pete does not give evidence?.
- (b) Joe and John are charged jointly with robbery. Joe says in his evidence that he was walking innocently along King Street with John who suddenly produced a knife and held up a lady walking in the opposite direction,



stealing her handbag and chain. According to Joe, he was as frightened as the lady by John's actions. However, Joe himself does have two previous convictions for petty theft.

John, through his counsel, begins to cross-examine Joe on his criminal record, but he is stopped by the judge, who says that "the prejudicial effect of such questioning will clearly outweigh its probative value". John is convicted and seeks your advice on his chances on appeal.

Advise him.

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### QUESTION 8

- (a) Stokes is charged with maintaining premises as an illegal betting house, contrary to the Betting Act, at premises ostensibly operated as a bar. The prosecution intends to rely on the evidence of an undercover policeman, who gained employment at Stokes' establishment as a barman, who will say that on several occasions he picked up a ringing telephone at the premises and heard callers at the other end attempting to place bets on horse races at Caymanas Park.

Advise on the admissibility of the policeman's evidence.

- (b) Mitch is charged with stealing. The evidence for the prosecution is that he picked the complainant's pocket close to the entrance to a primary school and ran into the school yard, hotly pursued by the complainant, who finally gave up the chase because of the number of children in his way. During the chase, several children shouted "is Nike, is Nike", apparently in

reference to the fleeing thief. Mitch is known as "Nike", because of his love for sneakers of that brand.

Advise on the admissibility of the complainant's evidence of what the children said.

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