

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1999

LAW OF EVIDENCE AND FORENSIC MEDICINE

(Monday, May 17, 1999)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1 (Compulsory)

(a) In addition to body fluids, Deoxyribonucleic Acid (DNA) can also be identified from -

- (i) posted stamp
- (ii) cigarette butt
- (iii) bones
- (iv) teeth
- (v) none of the above.

(b) Match the given samples usually taken in alleged rape cases for laboratory investigation with the corresponding answers -

<u>Samples</u>	<u>Answers</u>
- Vaginal Smear	- Acid Phosphatase
- Vaginal Swab	- Spermatozoa
- Semen	- DNA
- Urine	- Blood Group
- Blood	- Pregnancy
	- Gonococcus

(c) John Addict is searched at the airport by the police and a white substance, alleged to be cocaine, is found in his clothing. What is the chain of events to be followed by the police to prove to the Court that the alleged substance is indeed cocaine?

(d) The defence argued in a murder trial that the defendant was about to be attacked by the now deceased man with a knife when he shot him in self defence. When questioned by the prosecution, the defendant stated that he was standing less than two feet at the time he fired. The doctor gave evidence that an entrance gunshot wound was on the anterior chest of the

deceased without gunpowder deposition around the wound or on the clothing.

- (i) What was the range of fire?
 - (ii) Did the doctor's evidence support the defendant's story?
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QUESTION 2

- (a) Jerry 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) Advise on the standard of proof in a civil action for rescission of a contract on the ground of fraudulent misrepresentation.
- (c) On a charge of wounding with intent, Peter's defence is that he acted in self-defence. In directing the jury, the judge says the following -
 - "I have to bear in mind that the only burden borne by the accused is that of making self-defence a live issue fit and proper for your consideration. Once he has done this on a balance of probabilities, then it is your duty to examine the case for the prosecution to see if the case has been proved against him."

Peter is convicted and seeks your advice on whether the judge misdirected the jury in the passage above. Advise him.

QUESTION 3

- (a) During the course of his evidence as a witness for the prosecution in a criminal trial, Winston indicates that he cannot now recollect an important detail but says that "I am sure it would be in the statement I gave to the police".

Advise whether and in what circumstances he may be permitted to refresh his memory from his statement to the police.

- (b) Adam is charged with the rape of Melanie after an office party. His defence is consent. His attorney-at-law cross-examines Melanie alleging that on previous occasions she had gone out with Adam when they had held hands and kissed. Melanie denies this and says she never knew or spoke to Adam before that date. In her statement to the police, she said that she had seen Adam at office functions before and they had spoken.

What use, if any, can be made of the previous statement of Melanie by Adam's attorney-at-law?

- (c) John is charged with wounding Gary, the son of his neighbour, Natalie. Natalie is a witness for the prosecution and she testifies that it was a deliberate wounding. During cross-examination by John's attorney-at-law, it is put to Natalie that she has only recently claimed that the wounding incident was deliberate on John's part and she had seen that it was an accident. Natalie denies this and the prosecution has in its possession a statement from her to the police in which she said that the wounding was deliberate.

What, if anything, can the prosecution do after Natalie is cross-examined?

QUESTION 4

Peters & Stewart, a firm of attorneys-at-law, have acted generally for many years for Bricks Construction Company, a firm of building contractors. Bricks was the developer of a residential complex of townhouses. Bricks was involved from the very beginning in applying for planning permission, drawing up the contracts and giving general advice. At the completion of the project, Bricks, under a specific clause in the contract with the purchasers, imposed a 20% escalation charge on 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 sued Bricks to dispute the validity of the escalation charge. The suit has now reached the stage where the purchasers now seek discovery of the following documents from Peters & Stewart -

- (i) Bricks' original instructions to Peters & Stewart in regard to the project;
- (ii) the quantity surveyor's report upon which the contract prices of the houses had been initially priced;
- (iii) the quantity surveyor's report on which the escalation charge was based;
- (iv) a further quantity surveyor's report commissioned by Peters & Stewart on Bricks' behalf after the escalation charge had been imposed and the attorneys-at-law representing the purchasers had written disputing the escalation charge and threatening to sue.

You are an associate of the law firm, Peters & Stewart, and you are to advise the firm on the application for discovery.

Advise them.

QUESTION 5

David is charged with committing incest with his three daughters. The offences are alleged to have been committed over a period of several years and while each daughter has given a clear statement of the offence having been committed, they are all, as the trial judge observes, "rather short on detail". David denies the Crown's case and testifies that the relationship with his daughters has always been bad because he divorced their mother. The offences are joined on an indictment containing separate counts in relation to each daughter and the trial proceeds. Medical evidence is led by the prosecution which confirms each daughter has had sexual intercourse.

Advise what directions, if any, a trial judge should give on -

- (i) whether the evidence of each daughter is admissible in relation to the others;
 - (ii) the issue of corroboration generally.
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QUESTION 6

Bill is charged with rape. Bill in his defence testifies to his good character.

- (i) If Bill has no previous convictions or charges, what directions, if any, must a judge give the jury?
 - (ii) If Bill has a previous conviction for forgery, what use, if any, can the prosecution make of this and how should they proceed?
 - (iii) Would it make any difference to your answer at (ii) above, that if instead of giving sworn evidence, Bill asserted his good character in an unsworn statement from the dock?
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QUESTION 7

- (a) John was charged with murdering a girl by stabbing her. At his trial, the prosecution sought to tender into evidence a confession. John's counsel objected and a *voir dire* was held during which the accused himself gave evidence. It was put to him in cross-examination that he had stabbed the girl and he agreed. The judge excluded the confession on the ground of involuntariness. After the Crown's case was closed, John gave sworn evidence in his defence. Counsel for the Crown informed the court that he intended to cross-examine John to prove his admission on the *voir dire*, and to prove also that John had made statements in his testimony on the *voir dire* inconsistent with his testimony in his defence.

As counsel for the accused, what would be your response to the application?

- (b) Harry was charged with possession of ganja which was discovered during an illegal search of his home. At his trial, his attorney-at-law submitted that the evidence of the ganja find was inadmissible. The trial judge admitted the evidence. Harry was convicted and now appeals.

Harry's attorney-at-law proposes to argue on appeal that the evidence ought not to have been admitted because the trial judge had a discretion to exclude evidence which was obtained by illegal means and that he ought to have excluded evidence of the ganja find on this basis.

Is Harry's attorney-at-law likely to succeed?

QUESTION 8

- (a) Christopher is charged with importing beef from the United States contrary to the provisions of a local statute seeking to protect the local beef industry. Christopher claims that the beef is imported from a CARICOM country (which is not contrary to the statute) as he stated in his custom declaration form. The attorney-at-law for the Customs Department applies to tender into evidence a container in which the beef came that bears the label "Produce of U.S.A."
- (i) Does the defence have a basis to object to the course of action of the attorney-at-law for the Customs Department?
- (ii) Is Christopher's declaration form admissible in evidence for either the prosecution or the defence, and if so, for what purpose?
- (b) It is alleged that during an argument Fabian stabbed Ian in his chest. Shortly afterwards, Ian seriously wounded, made his way to a nearby house for help. Police officers arrived on the scene within minutes and Ian informed them that Fabian had stabbed him. He falls into a coma and is admitted into hospital where he dies a month later. Ian, who had fled from the scene, is subsequently charged for murder.

Advise on the admissibility of Ian's statement and the considerations the judge should bear in mind in addressing this.
