

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2000

LAW OF EVIDENCE AND FORENSIC MEDICINE

(Wednesday, May 24, 2000)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

FORENSIC MEDICINE

COMPULSORY

Question 1

- (a) Your client is charged by the police with "drunken driving". The forensic laboratory report presented to the Court shows his Blood Alcohol level to be 70mg/100ml (0.07%) ethyl alcohol. As counsel for the accused, what would be your response to the charge?
- (b) Associate the given Samples with the correct answers involving rape investigations.

<u>Samples</u>	<u>Answers</u>
- Acid Phosphatase	- Vaginal fluid
- DNA	- Male ejaculation
- Vaginal smear	- Blood
- HIV	- Urine
	- For microscopic examination
	- Caused by a virus
	- Different in all human.

- (c) John Crow is being tried for the murder of his wife. His defence is that she committed suicide with his .38 calibre revolver recovered at the scene. The post-mortem report submitted states that "an entrance gunshot wound is noted in the centre of the forehead of the deceased surrounded by gunpowder tattooing". The ballistic report confirms

gunpowder soiling on both hands of the deceased but no fingerprint on the weapon.

- (i) what is the range of fire?
 - (ii) what is your opinion of the case?
- (d) Is acute drug intoxication a form of natural or unnatural death?

LAW OF EVIDENCE

[Answers on separate answer booklet]

Question 2

- (a) At John's trial for murder, none of the crown's witnesses are examined as to whether John was provoked. John's counsel does not cross-examine these witnesses to suggest this and neither does John in his defence raise the issue of provocation.

John is convicted and his counsel appeals on the ground that since provocation reduces murder to manslaughter the trial judge ought to have, but did not, direct the jury that the crown must disprove the existence of provocation before convicting John of murder.

Advise on the merits of this ground of appeal.

- (b) Selvin, an executive with a large bank, is asked to resign after investigations reveal that he fraudulently converted large sums of money.

The bank decides not to bring criminal charges, but instead sues Selvin for fraudulent conversion.

Advise on the standard of proof.

- (c) Berry is charged on indictment with illegal possession of a firearm contrary to a statute which provides as follows -

“Any person in possession of a firearm without a licence shall be guilty of an offence.”

At his trial the crown lead evidence that Berry was stopped at a roadblock and when asked if he owned a firearm, said no. A firearm was seen protruding from his waist and the police seized it and laid the charge. Berry is convicted on this evidence and appeals on the basis that the crown adduced no evidence to prove that he had no licence.

Advise on the merits of the appeal.

Question 3

- (a) Roger is charged on an indictment for wounding his wife. At his trial his wife was reluctant to testify but was compelled by the judge to do so. Roger is convicted and appeals.

Advise Roger on his chances of success on appeal.

- (b) Sheila is a witness for the Crown in a rape trial. She had given a written statement to the police about a month after the rape in question but did not look at her statement before giving evidence at the trial which is taking place some two years after the rape. When Sheila testifies that she cannot recall certain details of the events leading up to the rape the trial judge invites her to withdraw to read the statement.

Advise whether the trial judge had a discretion to allow Sheila to refresh her memory in these circumstances.

- (c) (i) why are leading questions generally impermissible in examination-in-chief but permissible in cross-examination?
- (ii) give three instances when it is permissible to ask leading questions in examination-in-chief.
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Question 4

Peter is charged with raping Racquel who is 16 years old. At Peter's trial Racquel testifies that she told her father about the rape when she returned home several hours late on the evening of the alleged rape. She testifies that she told her father after he questioned her about the "distressed expression" on her face. Racquel's father also testifies at the trial as to the terms of the complaint made to him by his daughter.

Racquel also testifies that she subsequently told her aunt and two friends about the rape. Neither the prosecution nor defence object to this evidence and neither the aunt nor any of the friends give evidence.

Apart from Racquel and her father, no other witness gives evidence for the prosecution. Peter in his defence testifies that Racquel had sex with him and she consented.

Advise what direction, if any, the trial judge should give on -

- (i) the admissibility of Racquel's complaint to her father ;
 - (ii) on Racquel's evidence that she told her aunt and two friends of the rape;
 - (iii) the issue of corroboration.
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Question 5

- (a) Barry and Maurice are business partners. Barry was charged for the murder of a business competitor. Barry confessed to his attorney-at-law in a statement that he had hired the hitman, but after giving these instructions he alleged that Maurice was responsible and not him. Barry was acquitted of the murder. Subsequently Maurice is charged with the murder and Barry is called as a witness for the prosecution.

Maurice's attorney-at-law applies to the court for a summons to compel Barry and his attorney-at-law to produce Barry's statement to his attorney-at-law on the ground that there is a strong public interest in the disclosure of material supporting the innocence of an accused person.

Advise on the merits and likely success of this application.

- (b) Daniel is suing his employer X Ltd., for damages for injuries he sustained in an industrial accident at its factory. His attorney-at-law seeks discovery of a report on the accident by a firm of safety consultants hired by X Ltd. X Ltd., commissioned the report to find the cause of the accident, to prevent such further accidents in the future and to brief its attorneys-at-law in the event that litigation ensued. X Ltd., claims privilege.

Advise Daniel's attorney-at-law whether the claim of privilege is likely to succeed.

Question 6

- (a) Joe is charged with larceny and has been in the custody of the police for two days. While in custody Robert, Joe's friend and cell mate, promises to help Joe recover money Joe is alleged to have stolen and hidden if Joe tells him everything. Joe confesses to Robert and tells him where the money is stashed. The next day, Joe's father attends the police station to seek bail for Joe. The police sergeant refuses bail whereupon Joe's father says to Joe in the presence of the sergeant "I am sure if you give a statement you will get bail and we can go home." The police sergeant remains silent. Joe then gives a statement to the sergeant confessing his guilt.

At Joe's trial both Robert and police sergeant are called to give evidence.

Advise on the admissibility of Joe's confessions to Robert and to the police sergeant.

- (b) During the course of a voir dire on the admissibility of a confession, the accused, Ransford, when asked by the prosecutor whether the confession was true, replied to everyone's surprise, in the affirmative. The judge then ruled that the statement was admissible. He ruled that, "the question of admissibility being one of relevance, I am satisfied on the voir dire that this confession was on balance admissible."

At the resumed trial Ransford denies that the statement is true and further, denies having admitted its truth on the voir dire. Crown counsel is allowed to cross-examine Ransford on what he said at the voir dire and he is convicted.

Advise Ransford as to whether he has grounds to appeal.

Question 7

- (a) Joe is charged with embezzlement. Joe was previously :-
- (i) convicted for assault;
 - (ii) tried and acquitted for larceny;
 - (iii) dismissed by an employer on suspicion of forgery.

At Joe's trial he gives evidence and asserts his good character.

Advise as to what use, if any, the prosecutor can make of Joe's history.

- (b) Winston and Andre are charged and tried jointly for robbery. Winston testifies that he and Andre went to a bar when suddenly and to his

surprise Andre pulls a gun and robs the bar patrons. However, Winston has two previous convictions for robbery.

Andre, through his counsel, begins to cross-examine Winston on his criminal record but is stopped by the judge on the basis that "the prejudicial effect of such questioning outweighs its probative value."

Andre is convicted and seeks your advice on his chances on appeal.

Advise him.

Question 8

- (a) Diana is charged with managing a brothel at premises ostensibly operated by her as a grooming service for men. The prosecution intends to rely on the evidence of a policeman, who led a team of policemen which raided the premises. He will say that after the raid he stayed on the premises where he intercepted several telephone calls in which the callers, all male, asked to speak to Diana to enquire about sexual services.

Advise on the admissibility of this evidence.

- (b) At his trial for murder committed on March 1, Jim Brown puts forward a defence of alibi, namely that he was in Trinidad at Carnival at the time. In support of this he seeks to adduce in evidence a used airline ticket showing that on the day of the murder and before it occurred, he flew to Trinidad. The ticket bore the name Jim Brown.

Advise on the admissibility of the ticket.
