

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2015

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 15, 2015)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer **QUESTION ONE** 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.
- (f) Answers should be written in black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A
FORENSIC MEDICINE

COMPULSORY

QUESTION 1

- (a) Write short notes on the following:
- (i) Patterned injuries
 - (ii) Cocaine bug syndrome
 - (iii) Cadaveric Spasm
 - (iv) Shotgun entrance wound
- (b) Outline the objectives of a postmortem examination.
- (c) What are postmortem artifacts?
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PART B

EVIDENCE

QUESTION 2

- (a) Your jurisdiction seeks to capitalize on the trend in some other territories to decriminalize the personal, religious and medical use of marijuana. To this end, it passes an Act “The Decriminalization of Marijuana Act” (“the Act”).

The Act includes a particular provision that allows the sale by licensed businesses of edible products containing less than 20% marijuana (as defined by the Act). The Act goes on to provide that the sale by any person of any edible product containing more than 20% marijuana is a criminal offence and any person guilty of the offence shall be punishable by up to 3 years’ imprisonment.

The Act is silent on whether the burden of proof lies on the prosecution to prove that the edible product contains more than 20% marijuana, or whether the defence bears the burden of proving that it contains less.

You are a junior attorney in the Attorney General’s Department of your jurisdiction and your senior seeks advice as to the issue of the burden of proof and the constitutional implications, if any, of this provision of the Act.

Advise him.

- (b) Joe, a policeman, is charged for murder arising out of an incident which occurred while he was part of an operation to remove illegal vendors and their stalls from the streets.

The prosecution's case against Joe is that the deceased man, a vendor, resisted him by hurling expletives at him and then Joe, in a fit of anger, shot him in cold blood in reprisal for this.

At the trial of the charge before a jury, Joe gave evidence that the deceased and another vendor attacked him in an attempt to disarm him of his firearm. In the struggle, it went off accidentally and killed the deceased.

The trial judge in his summing-up to the jury adequately directed them on the defence of accident but went on to say:

In this case I must direct you not to consider self-defence because in this case the accused relies on accident and so self-defence does not arise for your consideration.

The accused was convicted and seeks your advice as to whether he has a ground of appeal in relation to this aspect of the summing-up.

Advise him.

QUESTION 3

Andrew and Barry were charged jointly for offences triable before a jury under legislation introduced in your jurisdiction to combat human trafficking. The legislation was introduced because of international convention requirements and the case against Andrew and Barry attracted media publicity because it was the first prosecution under the legislation. In particular, the detailed allegations against Andrew and Barry were published in the print media when the prosecutor outlined them in response to bail applications made on their behalf.

The prosecution's case was that Andrew and Barry were part of a ring which lured female immigrants into your jurisdiction on the promise of obtaining jobs, but instead forced them into prostitution.

In particular the prosecution's case was that Andrew was the ringleader. In those circumstances, it offered no evidence against Barry in order to use him as a prosecution witness.

The prosecution also obtained a statement from Cain, a cellmate of Andrew, while both were in custody. Cain gave a statement to the police that Andrew admitted to him details of the operation of the trafficking ring and that he forced co-operation from the immigrants by threatening to kill members of their families through his associates in their homelands. At the time he gave the statement, Cain had several previous convictions for fraud and offences of dishonesty and was facing a pending trial for other such offences when he gave evidence at Andrew's trial.

Andrew was convicted of the offences against him. Both Barry and Cain gave evidence for the prosecution. The trial judge had directed the jury to use "a fine tooth comb" in analysing their evidence because of the intricate nature of the evidence as to the operation of the human trafficking ring. This was the essence of his directions to the jury as to their evidence.

Andrew now seeks your advice as to whether he has grounds to appeal the conviction. Advise him.

QUESTION 4

Peter is the owner and operator of a large second-hand auto dealership. Jane was his previous executive assistant who left his employment in disputed circumstances.

Jane alleged that she left because one night after work Peter attempted to rape her at the office and she was forced to flee. Jane reported this allegation and the police arrested and charged Peter for attempted rape.

At Peter's trial the prosecutor indicated to the court that he was unable to locate the original handwritten statement of Jane. Peter's counsel was forced instead to cross-examine Jane on a typed copy of the statement purporting to bear Jane's signature, which had been supplied to him previously by the prosecutor. Although Jane admits it bears her signature, the judge stops Peter's attorney from cross-examining to prove inconsistencies between her evidence and the typed copy. The judge also stops defence counsel from cross-examining another prosecution witness, an employee of Peter, who gave evidence that she saw Jane flee the premises. Again defence counsel's cross-examination was to prove inconsistencies between her evidence and a statement she gave to a private investigator hired by Peter. The judge stops the cross-examination on the basis that the witness maintained that she felt intimidated into giving her statement to the investigator.

Another line of cross-examination pursued by Peter's counsel of Jane was that she had previously made a similar false allegation of attempted rape against another employer before working with Peter. Jane denied this.

Peter gave evidence in his defence to the effect that the allegation was totally false and nothing occurred between him and Jane that night or any other time. He asserted that he was about to fire Jane for incompetence and she was aware of this. Defence counsel also sought to call Jane's previous employer to give evidence of the previous false allegation of rape against him.

The judge ruled against the former employer giving evidence to this effect on the basis that it was “obviously a collateral issue and so evidence to contradict the complainant, Jane, on her previous denial in cross-examination of any such false allegation is inadmissible.”

In his summing-up, the judge explained to the jury his previous rulings as to the previous inconsistent statements by saying that it was improper and that defence counsel ought to have known better. He further commented that sometimes wealth can lead to irregularities in the administration of justice.

Peter is convicted and now seeks your advice as to whether he has grounds of appeal.

Advise him, giving reasons.

QUESTION 5

(a) You are an attorney-at-law and Joe is your client. He instructs you that he was the owner of a house under mortgage with the Tighthold Bank. Joe fell on hard times when he lost his managerial job due to redundancy. However, because he was the holder of an MBA he was confident at the time of finding another job.

In these circumstances, Joe entered into verbal discussions with the bank’s chief loans officer for a restructuring of his payments under the mortgage. She assured him that no action would be taken against him during these discussions.

To Joe’s surprise, he received formal notification of the bank’s intention to exercise its power of sale by a specified date. He said he called the chief loans officer who assured him it was a mistake. She said the bank’s attorney would not act on the notification

because she would give him instructions to that effect. Acting on this representation, Joe attempted to resume payments on his mortgage but the bank refused to accept them. Joe then filed an application for an injunction to restrain the bank from exercising its power of sale pending the trial of his claim. You, his attorney, prepared and filed an affidavit by Joe referring to his (Joe's) detailed discussions with the chief loans officer.

You are now preparing for the hearing of your application. The attorney on the other side notifies you that he intends to object to the reference in the affidavit to Joe's discussions with the chief loans officer as inadmissible hearsay.

Does the proposed objection have merit? How will you respond? Give reasons.

- (b) Assume on the facts at (a) above that your application for injunction was granted and the matter went to trial.

During the trial, the judge asked counsel for the bank to produce computer records of the amount due under the mortgage at the relevant time. You did not object to a bank officer producing and giving evidence of the bank's computer records of this. This is so despite a statute which provides that the computer records are admissible if there is a certificate from a technician confirming that the computer was in working order at the relevant time. No such certificate was provided.

Joe asks you to advise on the merits of an appeal based on the judge's ruling against the admissibility of the computer records at trial.

Advise him.

QUESTION 6

In an effort to stem a growing use of cocaine on a university campus in your jurisdiction, the police stepped up their surveillance of houses just outside campus that were suspected to be occupied by drug dealers.

The police obtained a search warrant for the search of a house occupied by Archie and Barry, both students of the university.

Armed with the search warrant for the house only, they entered the house but only Archie was there.

The police first searched Archie's pants' pockets, despite his protest, and found a small quantity of cocaine. They then searched the rest of the house and found a quantity of cocaine hidden behind the stove in the kitchen. When confronted with the find, Archie said he did not know of the cocaine. He further said that it could only be Barry's because Barry had told him he was dealing in cocaine and threatened to hurt him unless he kept quiet.

When Barry arrived at the house shortly after, the police informed him of what Archie had said about him without cautioning him beforehand. At that point Barry remained silent.

The police then arrested and jointly charged Archie and Barry for possession of and dealing in cocaine, in reference to the cocaine found behind the stove. Archie was also arrested and charged separately for possession of the cocaine found on him. They were each cautioned separately and both remained silent.

At the joint trial of Archie and Barry before a judge alone, the attorney for each submitted that the search warrant was defective based on a technical defect. The trial judge agreed. The trial

judge also upheld a submission by Archie's attorney that, in any event, the search warrant did not authorize a search of Archie's person. In these circumstances the judge proceeded on the basis that both searches were unconstitutional but did not exclude the evidence of the finding of the cocaine.

The defence attorneys submitted that the constitutional breaches required the exclusion of the evidence of the cocaine based on the Miranda rule in the USA, which they said ought to apply. Alternatively they submitted that the breach of the constitution created a *prima facie* basis to exclude the evidence of the find unless there were exceptional circumstances and there were none. In any event, they submitted that even if the judge had a discretion to admit the evidence, that discretion ought not to have been exercised in favour of admission. Both Archie and Barry gave evidence to the effect that the cocaine was planted by the police.

At the conclusion of the trial, the judge, in giving judgment, stated that he regarded Barry's silence before being cautioned as tantamount to an admission of guilt. He further relied on the evidence of the finding of the cocaine behind the stove and in Archie's pocket to convict both Barry and Archie.

Advise whether Archie and Barry have grounds of appeal. Give reasons.

QUESTION 7

Philbert and Romario were jointly charged and tried for and convicted of the murder of a house owner during the course of a burglary.

Philbert and Romario were detained and taken to the police station to give statements. Philbert was then escorted by the police to a room where, in the absence of Romario, he gave a

written statement to the police under caution. In the statement Philbert admitted that he and Romario planned to and did burgle the house. However, he also went on to assert in the statement that he was unaware that Romario had a gun, which was concealed, and that the use of a gun was not part of the plan.

After recording Philbert's statement, the police showed it to Romario. They let him read the statement and then invited him to reply. Romario immediately gave a statement under caution in which he admitted the joint plan to burgle the house, but asserted that it was Philbert who had the concealed gun and used it contrary to the plan.

At the joint trial of Philbert and Romario, Romario's attorney, in the absence of the jury, objected to the admission of his statement on the basis that it was obtained in breach of the Judges' Rules. The learned trial judge then asked Romario's attorney if he intended to object to the voluntariness of Romario's statement and his attorney replied that he did not. The trial judge then ruled Philbert's statement admissible, and held there was no need for a *voir dire* because there was no issue of voluntariness. He said:

I acknowledge that there was a breach of the Judges' Rules in that the police could have shown Romario Philbert's statement but should not have invited a comment. However, since there was no issue as to voluntariness and since I have a discretion to admit it notwithstanding such a breach I now rule it admissible.

After this, and still in the absence of the jury, the separate attorneys for Philbert and Romario applied for the references to their clients in the statements of the co-accused to be deleted or alternatively, for letters of the alphabet be substituted for their names. The judge ruled against these applications.

After both rulings, the judge sent for the jury and the trial resumed in the jury's presence. Both statements were admitted into evidence. Both Philbert and Romario were convicted.

Romario seeks your advice as to whether he has grounds of appeal in relation to both rulings.

Advise him. Give reasons.

QUESTION 8

Tony is a concert promoter. After a successful concert in which popular dancehall artistes "clashed", Tony stayed behind to supervise the clean-up operations.

While he was walking from the concert site to his car, parked nearby, he was pounced upon by two men, each armed with a gun. They robbed him of cash and expensive jewellery. However, while the men were riding away on a motorcycle Tony pulled his licensed firearm and shot at the men. The rider of the motorcycle lost balance and the motorcycle fell to the ground. The men then ran off in separate directions.

Two marked police vehicles sped to the scene as the officers in them had heard the gunshots. Tony gave them descriptions of the men having seen them for about two minutes, under a streetlight. He did not know the men before.

Tony went with the police in one of the cars to search for the men. The police in the other car went in a different direction, also in search of them.

While in the car and within minutes of the incident, the police spotted a man and detained him. They took him to the car and asked Tony if he was one of the men. Tony positively identified him as one of the men. No gun was found on him. The man, Roger, was arrested and charged for the robbery. The other man was not held.

The next day the police, acting on information, went to the nearby hospital where they saw a man matching Tony's description of the other man. That man, Christopher, was hospitalized for a gunshot wound, but the bullet was not recovered. Confident that they had the other robber, the police also arrested and charged him for the robbery. Christopher remained in the hospital for about a month. The police neglected to have an identification parade for him because of that period of hospitalization.

Both Roger and Christopher denied any participation in the robbery and asserted they had simply been walking from the concert. Roger and Christopher are now jointly indicted for robbery and their trial is imminent.

You are the clerk to the judge who is scheduled to try the case before a jury. The judge anticipates that defence counsel will submit that the identification of Roger is a confrontation identification and inadmissible. He also anticipates that the prosecution will pursue a dock identification of Christopher and that, again, defence counsel will submit that it is inadmissible.

The judge asks you to brief him on the law as to the admissibility of both identifications. He also asks you to brief him on whether, if the identifications are admitted, he should give special directions to the jury and, if so, the contents of these.

Advise the judge.

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