

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2016

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 13, 2016)

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) Cadaveric Spasm
 - (iii) Delirium Tremens
 - (iv) Postmortem Artifacts
- (b) Describe the medico-legal significance of a ligature mark in the neck of a deceased.

PART B

EVIDENCE

QUESTION 2

- (a) The popularity of recreational drones in the USA has spread to your jurisdiction and, in order to regulate their use, your government proposes to introduce a Bill for this purpose.

Accordingly, the legislative department in your jurisdiction drafts a Bill called the Drone Act which introduces a licensing regime for the use of drones, such licences to be issued by a body called the “Drone Authority.”

Section 1 of the Bill provides:

“Anyone operating a drone in a public place except under a licence issued by the Drone Authority is guilty of an offence.”

Section 2 of the Bill provides:

“Drones being operated under licences issued in accordance with section 1 of this Act shall not exceed the specifications and dimensions set out in this Act and a failure to comply with these specifications and dimensions is an offence.”

The Bill then sets out the specifications and dimensions.

Both sections 1 and 2 of the Drone Bill create maximum periods of imprisonment and fines for breaches of those sections.

You are a junior in the legislative department and you are asked to advise your senior on the issues as to whether sections 1 and 2 of the Bill impose a legal and/or evidential burden on a defendant and, if so, as to what issues and what, if any, standard(s) of proof apply.

Your senior does not wish any advice as to the constitutionality of the sections.

Advise your senior.

- (b) Paul is the owner and driver of a motorcar which was involved in a collision with Jay, a pedestrian. Jay was injured as a result of the collision.

As a result of the collision, Paul was charged with dangerous driving and was also separately sued by Jay for damages for negligence.

In both the criminal and civil proceedings Paul intends, at the separate trials, to give evidence that the collision was caused by Jay suddenly stepping into his (Paul's) driving path. Paul had previously pleaded in his defence in the civil proceedings that those actions on Jay's part amounted to negligence and were the cause of the collision.

Explain what burden(s) and applicable standard(s) of proof, if any, Paul bears in relation to his defences in the criminal proceedings on the one hand, and the civil proceedings on the other.

QUESTION 3

John was tried for and convicted of murder. The prosecution's case against him was based entirely on circumstantial evidence, including a statement under caution by him to the police, in which he admitted being in the general but not specific area of the murder. He also admitted that he had a dispute with the victim.

At John's trial, his attorney-at-law challenged the admissibility of John's statement under caution in a *voir dire* in the absence of the jury, on the basis that it had been given involuntarily to the

police. He alleged that the police had beaten him into giving the statement under caution. The trial judge rejected John's allegations of being beaten and, on the return of the jury, John's statement under caution was admitted into evidence on the prosecution's case. The defence continued to allege the police beating in the presence of the jury and cross-examined the police to this effect.

At the close of the prosecution's case the defence made a no case submission in the absence of the jury which was rejected by the trial judge. In so doing the trial judge, in his ruling acknowledged, in the absence of the jury, that the prosecution's case was very thin and that much of the circumstantial evidence was equally consistent with guilt as with innocence. The trial judge went on to say, however, that since inferences are a matter for the jury his ruling was that there was a case to answer.

On the resumption of the trial, John gave evidence denying the murder and also gave evidence of his being beaten by the police into giving his statement under caution.

In summing up the case to the jury, the trial judge correctly summarized the evidence and gave correct directions as to the burden and standard of proof. As to the weaknesses in the prosecution's case and the statement under caution he commented, *"There are some specific weaknesses but the strength or otherwise of the prosecution's case is a matter entirely for you. As to the statement under caution of the accused, again that is a matter entirely for you. If you believe it to be true you may rely on it even if you believe the police obtained it improperly"*.

John wishes to appeal. As his attorney-at-law advise him as to whether he has any grounds of appeal as to:

- (i) the approach of the trial judge to the no case submission; and
- (ii) the trial judge's summing-up to the jury.

QUESTION 4

Tom was tried for and convicted of robbery of a bank. The prosecution's case was that he, along with two gunmen, participated in the robbery and that he was the getaway driver. The two gunmen are still at large.

When Tom was arrested he gave a written statement under caution to the police to the effect that the two gunmen, whom he did not know before, forced him to drive to and from the bank under threat to kill him for failure to do so. However, at Tom's trial, the prosecution did not adduce Tom's statement under caution into evidence.

Tom gave evidence in his defence. When Tom attempted to give evidence of the threatening statements made to him by the gunmen before they reached the bank, the trial judge ruled that evidence inadmissible. The trial judge's ruling was to the effect that those threatening statements were inadmissible because they were not part of the *res gestae* common law exception to the hearsay rule, as the robbery was not yet in progress. He ruled that anything said by the gunmen to him during and immediately after the robbery were, however, admissible under this common law exception.

The trial judge also ruled against attempts by Tom's attorney-at-law to tender and have admitted into evidence Tom's statement under caution to the police. The trial judge's ruling was to the effect that the statement was merely self-serving and, on that basis, inadmissible.

Tom now wishes to appeal. Advise Tom on:

- (i) the propriety of the prosecution's decision not to tender into evidence Tom's written statement under caution to the police, and its evidential value if it were so tendered and admitted;

- (ii) the propriety of the judge's ruling against Tom seeking to tender into evidence his written statement under caution, and its evidential value if it were so tendered and admitted; and
 - (iii) the judge's ruling to exclude the threatening statements by the gunmen as hearsay.
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QUESTION 5

Two brothers, Peter and Andrew, who lived in the same house, were jointly charged for offences under legislation in your jurisdiction to combat a specific fraud called the "lottery scam". The fraud involves telephone calls to persons abroad informing them that they have won a lottery. The callers would then request and obtain funds from such persons on the false pretence that taxes are payable as a condition of payment of the lottery winnings.

Peter's girlfriend, Jane, made a report to the police, an Inspector Justice, that she overheard Peter on the telephone carrying out the scam. She accused Peter, in the absence of Inspector Justice, of scamming but he remained silent.

Inspector Justice in turn confronted Peter at the house. He repeated Jane's account of the telephone conversation she overheard and her conversation with him (Peter). He then cautioned Peter who again remained silent. Inspector Justice then searched the house and found incriminating sheets of paper containing numerous names with foreign telephone numbers. He then arrested and charged Peter.

Andrew, having apparently received word of Peter's arrest, turned up at the police station with his attorney-at-law and both expressed Andrew's willingness to be interviewed by Inspector Justice. Inspector Justice began the interview in the presence of his attorney-at-law without first cautioning Andrew because he started by asking routine questions which Andrew answered. Inspector Justice then produced the sheets of paper with the names and telephone numbers and

asked Andrew if he had called any of the numbers. Andrew remained silent. Thereupon Inspector Justice cautioned him for the first time and Andrew remained silent to all further questions. Andrew was then arrested and charged.

You are a junior to a senior prosecutor assigned to prosecute the case against Peter and Andrew. Your senior asks you to respond to questions on the evidential significance, if any, of Peter's and Andrew's silence.

- (a) In relation to Peter the questions are as follows:
 - (i) If Jane does give evidence at trial of the telephone conversation she overheard and her accusation against Peter, can Peter's silence be evidence of guilt?
 - (ii) If Jane does not give evidence at trial but Inspector Justice gives evidence of his recounting of Peter's girlfriend's allegations and confrontation of Peter outlined above, should the judge give special directions as to his recount to Peter of what Jane said?
- (b) In relation to Andrew the question is whether Andrew's silence can be evidence of guilt in relation to questions to him before he was cautioned having regard to the presence of his attorney-at-law to protect him.

QUESTION 6

Barry and Charles were jointly tried for and convicted of murder.

At the trial, Barry and Charles were separately represented by attorneys-at-law. Just prior to trial, the defence attorneys were served with copies of statements from prosecution witnesses. The attorneys-at-law did not object because they felt confident that they could persuade the judge to exclude their clients' statements under caution (which, unlike the other statements, had been served on them in time) and on which the prosecution heavily relied.

At the trial, the prosecution sought to rely on the incriminatory statement to the police under caution given by each, while they were under arrest, but separated from each other. Each attorney-at-law challenged the admissibility of each statement in a *voir dire* in the absence of the jury. At the conclusion of the *voir dire* the trial judge made certain findings of fact.

In relation to Barry, the trial judge found the following facts. While under arrest at the police station, Barry telephoned his attorney-at-law, who turned up at the station. His attorney-at-law advised Barry of his right to remain silent if the police sought to obtain a statement from him. Barry's attorney-at-law had to leave to attend court and so he gave the investigating policeman, Inspector Badd, his telephone number to contact him if any questioning of his client were to take place. Despite this, Inspector Badd took the incriminating statement from Barry, but did not advise him of his constitutional right to advice from counsel.

In relation to Charles, the trial judge found the following facts. Charles did not have an attorney-at-law while under arrest, and neither did Inspector Badd advise him of his right to advice from counsel. Inspector Badd questioned Charles as to his willingness to give a statement. Charles, in reply, expressed his willingness to do so but said he would prefer to have an attorney-at-law. Inspector Badd replied that he would be entitled to an attorney-at-law at trial, especially for the crime of murder he said Charles had committed.

At the conclusion of the *voir dire*, the trial judge ruled both the statements of Barry and Charles admissible. He acknowledged that Inspector Badd had breached the constitutional rights of both to advice from counsel but emphasized that he had a discretion, despite those breaches, to admit the statements. In the case of Barry, he said that in exercising his discretion in favour of admitting the statement, he relied on his finding that Barry had voluntarily acted contrary to his attorney-at-law's advice. In the case of Charles, he said he exercised his discretion in favour of admitting the statement because Charles had expressed his willingness to give a statement and therefore he found that Charles would have done so, with or without an attorney-at-law. He also found that Charles's statement was strong evidence against him and there was little other evidence against him and relied on this.

On the return of the jury, the statements of Barry and Charles were admitted into evidence, and both were eventually convicted of the murder.

Barry and Charles, subsequent to their convictions, retained an attorney-at-law with a reputation for taking constitutional law points. He filed appeals on their behalf. In relation to the late disclosure of the statements of the prosecution witnesses, he proposes to argue that this amounted to a breach of his clients' constitutional rights to timely disclosure. In relation to the breaches of his clients' constitutional right to advice from counsel, he proposes to argue that these breaches required exclusion of the statements. On both these bases, he proposes to argue that the convictions ought to be quashed because of the fundamental importance of compliance with "absolute" constitutional rights.

As the prosecutor set to argue the appeals, advise on the merits of these grounds of appeal.

QUESTION 7

Dr. Phil, and his employer, Childcare Hospital, were sued by parents of an infant who died in their care. The infant had been born prematurely, and was among others who died at about the same time, at the hospital in a particular ward.

You are an attorney-at-law at the firm representing Dr. Phil and the hospital. Your senior informs you that the case management conference has just been heard, and an order for standard disclosure made, in relation to the parties to the claim.

Your senior instructs you to describe the essentials of what is involved in complying with an order for standard disclosure, with a view to inserting it in a letter to the client.

Your senior also instructs you to review the documents on the file, in order to comply with the order for standard disclosure. On reviewing the file, you note the existence of the following documents:

- (i) an adverse report from the Ministry of Health, which predated the deaths of the infants, on the conditions in the ward and the staffing of it;
- (ii) another adverse report from an independent paediatrician as to Dr. Phil's treatment of the infant, which was prepared after the claim was filed, and which the hospital does not intend to rely on at trial;
- (iii) Dr. Phil's entries in the docket concerning the infant;

- (iv) correspondence from your firm to its clients, Dr. Phil and Childcare Hospital, advising them to settle the claim; and
- (v) correspondence between your firm and the claimants' firm of attorneys-at-law in a bona fide attempt to settle the claim, but which bore no fruit.

Respond to your senior's instructions by summarising the essentials of the requirements to comply with an order for standard disclosure. Also advise on the treatment of the documents mentioned at (i) – (v) above in the process of complying with the order for standard disclosure.

Question 8

Roger was tried for and convicted of murder.

At Roger's trial, Joe, a policeman, gave evidence for the prosecution. He said that on the night in question, he was driving home, while off duty. While caught up in traffic, he saw ahead of him what appeared to be a scuffle between two men on the sidewalk, near to an open lot of land. He then heard a gunshot from the direction of the two men and so he came out of his car and ran in their direction. While rushing to the scene, he saw Roger, one of the two men, with what appeared to be a gun. Roger turned and fled in the opposite direction. Joe gave evidence that he knew Roger before, and by name, because they lived and grew up in the same community. He saw Roger's face for about five seconds, from a distance of about 20 metres, while Roger was near a street light.

Joe gave evidence that on reaching the scene, he discovered the other man suffering from a gunshot wound. He said he took the man to the hospital but eventually the man was pronounced dead, after emergency surgery. He spent about two hours at the hospital.

Joe gave further evidence that he left the hospital and then reported the matter to the local police station. He said that he named Roger as the gunman in his report to the investigating officer. After this he accompanied the investigating officer to Roger's home, at the investigating officer's request, and there he identified Roger. The investigating officer gave evidence to similar effect. The investigating officer then arrested and charged Roger for murder.

At the close of the prosecution's case, Roger's defence attorney made a no case submission in the absence of the jury, on the basis that the quality of the identification evidence was poor. The trial judge rejected the no case submission. In so doing, the judge, in reference to Joe, said that his credibility was a matter for the jury, and there was nothing to suggest that his evidence was untruthful nor had he been cross-examined to this effect.

Roger gave evidence of an alibi in his defence. He said that he was at home with his girlfriend at the time of the murder. He also admitted that he knew Joe from the community.

You are a junior to Roger's attorney-at-law. He wishes you to advise him on the prospects of an appeal. In particular, he asks you to advise him on:

- (i) whether the evidence of Joe and the investigating officer as to the report naming Roger was admissible and, if so, on what basis;
- (ii) whether the trial judge's approach to his analysis of the no case submission was correct, giving reasons; and
- (iii) the full terms of the *Turnbull warning* the trial judge ought to have given and its application (so that Roger's attorney-at-law can compare it to the trial judge's actual summing-up).

Advise your senior, Roger's attorney-at-law, on the above issues.

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