

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2018

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 11, 2018)

**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.

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

**PART A**  
**FORENSIC MEDICINE**

**COMPULSORY**

**QUESTION 1**

**Answer both (a) and (b)**

- (a) Write short notes on each of the following:
- (i) Stab wounds
  - (ii) Skeletonization
  - (iii) Types of thermal burns
  - (iv) Exit gunshot wounds caused by bullets from a rifled-barrel gun
- (b) Briefly outline the medico-legal significance of each of the following:
- (i) The presence of ligature marks on the neck of a deceased
  - (ii) Abrasions
  - (iii) Cadaveric spasm
  - (iv) Livor Mortis
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**PART B**

**EVIDENCE**

**QUESTION 2**

**Answer both (a) and (b)**

- (a) Mary, who has lung cancer, was an employee of a furniture manufacturing company called Furniture First Ltd. She sued the company in the High/Supreme Court of your jurisdiction. The cause of action in Mary's claim is negligence. She alleged that the exposure to asbestos found in the material in the ceiling tiles and piping insulation in the factory caused her lung cancer.

You are the attorney-at-law for Furniture First Ltd and you have filed a defence to the claim denying that asbestos caused Mary's lung cancer. The case management conference in relation to the claim has been held. An order was made for standard disclosure by both parties.

Describe the essential requirements to comply with an order for standard disclosure.

- (b) Assume on the facts of (a) above that your client's file contains the following documents:
- (i) A report predating the claim from the environmental unit of the Ministry of Health to the company recommending the closure of the factory for three months to strip it of asbestos.
  - (ii) A confidential report from a private environmental consultant, hired by and addressed to the company, after Mary's claim, confirming asbestos could have caused Mary's cancer.
  - (iii) Correspondence from you to Furniture First Ltd, recommending settlement of Mary's claim.

(iv) Correspondence between you and Mary's attorney-at-law in an attempt to settle the claim.

Describe how each of these documents should be treated in the process of compliance with the order for standard disclosure.

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### **QUESTION 3**

Roger, a security guard and licensed firearm holder, while on duty at a supermarket, was involved in the shooting of a man. The man was severely wounded and Roger was arrested by the police.

When Roger was arrested and cautioned, he told the police he had drawn his firearm to arrest the man for shoplifting. Roger went on to assert that the man had tried to disarm him of the firearm and that was when the gun went off accidentally. Roger was subsequently charged for wounding with intent.

At Roger's trial for wounding with intent, the arresting policeman gave evidence for the prosecution as to what Roger said on arrest.

Roger gave evidence in support of his defence of self-defence. His evidence was to the effect that when he drew his firearm to arrest the man, the man tried to disarm Roger. Roger went on to testify that it was in those circumstances that he shot the man in self-defence. Roger also gave evidence of his own good character and absence of convictions.

The trial judge gave directions to the jury about Roger's statement to the police on arrest. The trial judge's directions were as follows:

*"Members of the jury, you are to decide this case based only on the evidence here today. What the accused said to the arresting policeman is not evidence. I allowed the arresting policeman to say what the accused said, only because the prosecutor chose to lead it, and*

*to show the reaction of the accused on arrest. What the accused said at that time, has no evidential value beyond that. In any event, the accused has given evidence today of a defence, namely, self-defence, which is inconsistent with what he told the police. To this extent, the defence of self-defence at trial has destroyed the prior statement of the accused to the police that the firearm went off accidentally.”*

As to Roger’s good character, the judge’s directions were as follows:

*“There is evidence that Roger has good character, but members of the jury, good character is not a defence to a charge and you should disregard it in coming to your verdict.”*

Roger is convicted and seeks your advice as to whether he has good grounds of appeal.

Advise him, giving reasons.

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#### **QUESTION 4**

David, who lives in a community plagued by armed gangs, was charged with shooting with intent at the police. The allegations against David are that one night he was with a group of men who, on the approach of a police vehicle, fired at it and fled.

The charge against David came up for trial. The two policemen in the vehicle gave evidence that, although they only saw the men for a very short time, they recognized David because they had seen him about three times before in the community. They gave evidence also of pointing him out on an identification parade. The defence attorney-at-law cross-examined the officers to the effect that their identification of David was mistaken, as he was elsewhere at the time of the incident.

At the close of the prosecution's case against David, his attorney-at-law made a no case submission on the basis that the identification evidence was too poor to establish a prima facie case against David. The trial judge rejected the no case submission, and in his ruling, said:

*"There is nothing to suggest so far that these police officers are dishonest, and that being the case, there is no basis for me to stop the case at this stage. There are no inconsistencies to render the prosecution's case weak.*

*Furthermore, the defence of the accused is alibi. He who asserts must prove and therefore the accused has an evidential burden to prove his alibi but to the lesser standard of proof, namely a balance of probabilities."*

The trial proceeded and David gave evidence of his alibi. He was convicted and the trial judge gave no special directions as to the defence's case of mistaken identification.

- (a) David seeks your advice as to whether he has good grounds of appeal. Advise him.
- (b) If special directions were required, state the contents of these.

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## **QUESTION 5**

Mercy is a witness to a drive-by shooting of her relative by a reputed gangster in her volatile neighbourhood. Mercy knew the gangster before as Gary, having gone to the same school and having seen him in the neighbourhood on a daily basis. Fearful for her life, Mercy delayed in giving a statement to the police until a month after the shooting. Gary was subsequently arrested and charged for shooting with intent.

At the trial before a jury, Mercy attended court as a prosecution witness under a subpoena and, with the permission of the prosecutor, refreshed her memory from her statement before giving evidence. While being examined in chief by the prosecutor, Mercy testified that she saw the shooting but did not recall who shot the relative. The judge allowed Mercy to refresh her

memory from her statement to the police but she still maintained that she could not recall who shot her relative. The prosecutor then successfully applied to the trial judge for Mercy to be treated as a 'hostile' witness and he then confronted Mercy with her previous statement to the police. When confronted with the statement, Mercy admitted that she identified Gary therein, but initially denied that the statement was true. After further questioning by the prosecutor, Mercy eventually admitted that her statement was true.

At the conclusion of the Defence's case, the trial judge in his summing up reminded the jury that Mercy was cross-examined by the prosecutor although he had called her as his witness. In those circumstances, the judge indicated to the jury that it was for them to decide whether to believe any aspects of her evidence.

Gary was convicted and his attorney-at-law proposes to argue three grounds of appeal. The first ground is that, Mercy ought not to have been allowed to refresh her memory from her statement before giving evidence. The second ground is that the trial judge erred in allowing Mercy to refresh her memory from a "non-contemporaneous" statement. The third ground is that, since Mercy was cross-examined by the prosecutor, the trial judge ought to have indicated to the jury that her evidence ought to have been disregarded in its entirety.

Advise on the merits of the grounds of appeal.

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## **QUESTION 6**

You are a junior prosecutor. Your senior has asked you for advice on issues arising from a case scheduled for trial before a jury. The case involves two accused persons, Jane and George, who were separately arrested and charged for possession of and attempting to export cocaine. George absconded bail and a warrant has been issued for his arrest.

There is a statement to the police on the case file from the immigration officer who found the cocaine in Jane's luggage when she was about to board a flight to travel out of the jurisdiction.

The immigration officer, who is now deceased, said in his statement that when he found the cocaine he immediately summoned the arresting policeman, who attended and assumed the investigation of the matter.

There is also a statement from the arresting policeman on the case file. In his statement the arresting policeman said that, when arrested, Jane gave him a written statement under caution. Jane's statement under caution is on the case file also. In it, she said that George, a member of a gang in her community, had threatened to kill her unless she transported the cocaine out of the jurisdiction.

The arresting policeman arrested and charged Jane after she had given her statement under caution.

Your senior informs you that he intends to tender the statement of the immigration officer into evidence under legislation in your jurisdiction which allows for this where the maker of a statement is deceased at the time of the trial.

Your senior asks you for advice on the following issues:

- (i) whether Jane's statement under caution should be edited to exclude any reference to George's name, assuming George is rearrested and is jointly indicted and tried with Jane;
- (ii) assuming that the immigration officer's statement is admitted into evidence at the trial, whether the trial judge should give any special directions about it, and if so, the content of such directions; and
- (iii) assuming that Jane seeks to give evidence in her own defence at her trial, as to the threat by George, whether such evidence is admissible, if George is not rearrested and instead Jane is solely indicted and tried for the offences in question.



## **QUESTION 7**

The training academy for policemen in your jurisdiction invites you, a prosecutor, to summarize the law on certain issues arising when the police question suspects. The issues are:

- (i) whether the silence of a suspect, in response to questions from the police before caution, can lead to inferences of guilt, if the attorney-at-law for the suspect is present during the questioning;
- (ii) whether lies by the suspect, which emerge from the questioning of the suspect, can support an inference of his guilt, assuming that at trial the prosecution can prove such lies beyond reasonable doubt; and
- (iii) whether the failure of a suspect to mention a specific defence, in the process of questioning by the police, can later lead to an adverse comment by the trial judge to the jury if that defence is relied on for the first time at trial.

Prepare a brief summary of the law on these issues.

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## **QUESTION 8**

There was a spate of violent incidents, involving students, at high schools in your jurisdiction and a public outcry about this. The police responded by promising to address the situation with urgency.

Tim, a troubled and intellectually challenged high school student, was arrested and charged for wounding with intent. The charge arose from an incident at the school when another student was stabbed with a knife on the school's premises. The police had arrived on the scene shortly after the incident and, based on information, arrested Tim and immediately took him into custody at the police station.

On arrival at the police station, the arresting policeman duly advised Tim of his rights, but Tim, a defiant young man, declined to speak to any member of his family or be represented by an attorney-at-law. In these circumstances, the arresting policeman then charged Tim for wounding with intent.

After Tim was charged, and while he was in custody, the arresting policeman, who by that time had obtained a statement from the victim, proceeded to question Tim. He recorded the Questions and Answers, and Tim, in his answers, incriminated himself.

At Tim's trial before a jury, his attorney-at-law, based on Tim's instructions, challenged the admissibility of the record of the Questions and Answers. The challenge was in a *voir dire* in the absence of the jury. The challenge was on the basis that the police threatened Tim with violence to secure his cooperation, and also that the police had breached the Judges' Rules (or the equivalent guidelines in your jurisdiction). The rule in question is that which prohibits the questioning of an accused person after he has been charged, unless there are exceptional circumstances.

At the conclusion of the *voir dire*, the trial judge rejected the defence's case that Tim was threatened. In relation to the alleged breach of the Judges' Rules, the trial judge said in his ruling:

*"I have a discretion to admit the record of the Questions and Answers into evidence despite a breach of the Judges' Rules. In this case, I conclude that there were no threats to the accused and so he gave the answers voluntarily. Therefore, my discretion is properly exercised. In any event, the spate of violent incidents in our high schools amounts to exceptional circumstances which justify my ruling."*

The trial judge then admitted the record of the Questions and Answers in the presence of the jury. The defence attorney-at-law, in the jury's presence, continued to assert, through cross-examination of the arresting policeman, that the accused was threatened. Tim also gave

evidence to this effect. In relation to this, the trial judge in his summing up, said the following:

*“Members of the jury, in your absence I had conducted a hearing to address the issue as to the defence’s assertion that the record of Question and Answers was extracted by threats. I rejected this, but you may take into account the defence’s assertion to the contrary in deciding what weight to give the record.”*

Tim was convicted and seeks your advice as to whether he has good grounds of appeal.

Advise him, giving reasons.

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**END OF PAPER**