

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2016

LAW OF EVIDENCE AND FORENSIC MEDICINE

(AUGUST, 2016)

Instructions to Students

- (a) Time:           **3½ hours**
  
- (b) Answer **QUESTION ONE** and **FOUR** others.
  
- (c) 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.**
  
- (d) It is unnecessary to transcribe the questions you attempt.
  
- (e) 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**

- (a) Write short notes on the following:
- (i) Defence injuries
  - (ii) Post-mortem stains
  - (iii) Cocaine Bug Syndrome
  - (iv) Infamous conduct during medical practice
- (b) Describe the salient post-mortem appearances in a death from alleged “Manual Strangulation”.
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## **PART B**

### **EVIDENCE**

#### **QUESTION 2**

Duncan, a prominent dancehall deejay, was tried for and convicted of causing grievous bodily harm to the complainant, a rival deejay, at a nightclub.

The evidence of the complainant was that he and Duncan turned up at the same nightclub and a confrontation ensued. The complainant testified that Duncan instructed Joe, a member of Duncan's entourage and reputed bodyguard, to hold him (the complainant). The complainant said it was then that Duncan punched him forcefully in the jaw, fracturing it.

Joe had originally been jointly charged with Duncan, but gave evidence for the prosecution at Duncan's trial. Joe was able to do so because the prosecution had offered no evidence against him, in order to call him as a prosecution witness.

The investigating officer also gave evidence to the effect that Duncan remained silent on being arrested and charged.

Duncan gave evidence in his defence. In his evidence, he denied that Joe was involved in any way in the confrontation. He said that the complainant attacked him and he punched the complainant in self-defence.

When the trial judge summed up the case to the jury he gave no special directions in relation to Joe's evidence. When directing the jury on Duncan's defence of self-defence, the trial judge asked the jury to consider the possibility that Duncan invented it as an afterthought since he did not raise it when he was arrested and charged.

Duncan seeks your advice as to whether he has grounds for appeal.

Advise him, giving reasons.

### QUESTION 3

In your capacity as a junior prosecutor, you have been handed a file by your senior in order to advise him on matters arising from it. You note that the file concerns a rape charge against Roger, who is alleged to have raped his ex-girlfriend, Mary, in her apartment.

You also note that Mary's statement to the police is to the effect that after the break-up, Roger still had a key to her apartment. Mary alleged that Roger used the key to enter her apartment, without invitation, and raped her there.

In her statement, Mary also said that on the same day of the rape, she told her friend Jane that Roger had raped her. Jane gave a statement to the police to similar effect. Jane also added in her statement that Mary, prior to the alleged rape, had admitted to her that she felt deeply rejected by Roger and wanted revenge against him.

It is apparent from the file that Roger's defence at trial is likely to be consent. This is so because he told the investigating officer that they had consensual sex, and that the sexual encounter was at Mary's insistence.

Your senior instructs you to assume that the prosecution, out of fairness, will lead evidence from Jane corresponding to her entire statement. He asks for your advice as to:

- (i) whether the fact and terms of Mary's report to her friend Jane are admissible, and if so, the conditions to be met for this and the evidential value of such evidence; and
- (ii) whether the trial judge should give special directions in relation to Mary's evidence and, if so, the content(s) of those directions.

Advise your senior.

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#### **QUESTION 4**

In order to address an alarming increase in violence against children and women (including spouse against spouse violence), the police force creates a special department to investigate and prosecute such cases.

This special department of the police force has invited you, a prosecutor, to deliver a lecture to them on the essentials of the law on:

- (i) the competence and compellability of spouses to give evidence for the prosecution against their spouses; and
- (ii) the competence and compellability of children as witnesses, and corroboration requirements, if any.

Prepare brief notes on the essentials of the law in these areas as a preliminary step to your lecture.

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#### **QUESTION 5**

Christopher, a gardener, was tried for and convicted of the murder of his former employers, an elderly couple, Mr and Mrs Rich at their home. They were chopped to death with a machete.

At Christopher's trial the couple's adult son gave evidence for the prosecution that the couple had dismissed Christopher on the day before the murder.

The investigating officer, Inspector Probe, also gave evidence for the prosecution. He said that on receiving a report of screams from the premises, he attended the home within minutes where he saw Mr and Mrs Rich severely wounded. Mrs Rich was unconscious. He then gave evidence of what each of them told him as to the attack.

Mr Rich, with his last gasps, told him that he was going to die as a result of Christopher's attack. He told Inspector Probe to do everything to save his wife's life and then died.

Inspector Probe also testified to what Mrs Rich told him after she regained consciousness and before she died. He said that he rushed her to the hospital where she remained unconscious for two days. On regaining consciousness for a short while, she sent for him to attend her bedside. There she told him that Christopher had attacked them. She died shortly after this.

Inspector Probe did not take written statements from either Mr or Mrs Rich.

Inspector Probe further testified that he made enquiries of the neighbours and, as a result of the information they provided and the verbal statements of Mr and Mrs Rich, he arrested and charged Christopher. None of these neighbours, however, were willing to give written statements to him and so none were taken.

Christopher now wishes to appeal. In particular, he wishes your advice as to whether the trial judge ought to have admitted the evidence of Inspector Probe as to the verbal statements of Mr and Mrs Rich and his enquiries of the neighbours.

Advise Christopher.

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## **QUESTION 6**

Gary, a policeman, was tried for and convicted of the murder of a civilian. Gary was among several policemen dispatched to control a crowd of angry protestors in a community. The crowd had been protesting the earlier shooting of a resident of their community by the police. The prosecution's case was that Gary had shot and killed one of the protestors without justification.

Gary had given a written statement under caution to the Police Investigating Authority, the independent body responsible for investigating alleged police abuses. In Gary's statement, he said

that the deceased was so angry that the deceased wrestled him for his (Gary's) gun. Gary went on to say in his statement that in those circumstances the gun went off accidentally.

At Gary's trial, his written statement under caution was tendered by the prosecution and admitted into evidence without objection. Contrary to his written statement under caution, Gary gave evidence that during the struggle for the gun he shot the deceased in self-defence. Gary also gave evidence of his excellent disciplinary record and lack of previous convictions.

In his summing-up, the trial judge withdrew the defence of accident from the jury on the basis that Gary, in giving evidence, relied upon the defence of self-defence. The judge gave no directions about Gary's evidence of his good character.

Gary now consults you as to whether he has grounds of appeal.

Advise him.

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## **QUESTION 7**

Tony was tried for and convicted of extortion. The prosecution's case was that he was a leader of a gang which extorted money from business owners in a commercial area.

Stephen, a business owner, gave a written statement to the police a month after the extortion against him had begun. He admitted in his statement that he delayed giving his statement out of fear.

Patrick, another business owner, also gave a written statement to the police about the extortion.

Tony's trial began some two years after Stephen, and Patrick had given their statements against him to the police.

Both before and during Tony's trial, Stephen, now a witness for the prosecution, was allowed to refresh his memory from his statement because on both occasions he indicated he could not recall some details.

Patrick, now also a witness for the prosecution, took the oath but refused to answer any questions, apparently out of fear. The trial judge then allowed the prosecutor to treat Patrick as a hostile witness and then allowed the prosecutor to cross-examine him on the statement he had given to the police.

Tony, who now wishes to appeal, consults you as to whether he has grounds for appeal.

Advise him.

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### **QUESTION 8**

Carl and Jack were jointly tried for and convicted of murder. At their trial the prosecution relied principally upon an incriminatory statement allegedly given voluntarily by each under caution.

In the absence of the jury, Carl's attorney-at-law requested the judge to hold a *voir dire* to determine the issue of admissibility of the statement attributed to him. Carl's case was that the police fabricated the statement and forced him to sign it by threats of violence. The trial judge declined to hold a *voir dire*. He gave as his reason that no question of voluntariness arose based on Carl's case.

Jack's attorney-at-law, in the absence of the jury, informed the judge that Jack's case was that he gave the statement because he was beaten by the police. On this basis the judge conducted the *voir dire* in the absence of the jury. When Jack gave evidence in the *voir dire* as to the beating by the police, the judge allowed the prosecution to cross-examine Jack on the truth of his statement. Jack admitted it was true. On this and other bases, the judge ruled that Jack had the burden to prove that his statement had been given involuntarily but had not done so.

On the return of the jury the judge admitted the statements of Carl and Jack into evidence.



Carl and Jack now consult you as to whether they have grounds of appeal as to the judge's approach to the admissibility of the statements.

Advise them, giving reasons.

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**END OF PAPER**