

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2018

LAW OF EVIDENCE AND FORENSIC MEDICINE

(AUGUST 00, 2018)

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. Erasable pens are not allowed.

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) Hanging
 - (ii) Types of lacerated wounds
 - (iii) Rigor Mortis
 - (iv) Entry wounds caused by bullets fired 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) Adipocere formation
 - (iii) Abrasions
 - (iv) Drowning
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PART B

EVIDENCE

QUESTION 2

Frank, an employee of a chemical manufacturing company, Chemical Creations Ltd., while operating a machine at work, was severely burned when a pipe carrying hazardous chemicals burst, and its contents spewed onto his body. Frank was not wearing safety clothing at the time.

Frank issued proceedings against Chemical Creations Ltd., for negligence in the High/Supreme Court of your jurisdiction. You are an attorney-at-law at the law firm representing the defendant, Chemical Creations Ltd., and you have been briefed to appear for the client at the trial.

In preparation for trial, you review the statement of case/pleadings. Frank, in his Particulars/Statement of Claim alleged that no safety clothing was available to him for work on the day of the incident because none was in the storeroom, where such clothing was kept.

In its Defence, your client alleged that safety clothing was provided and available in the storeroom at the time, and that Frank was negligent for not wearing it.

You also note on the file, witness statements from both parties exchanged under an order at the case management conference. The only witness statement for the defendant is from a supervisor who will say that at the end of each day he ensured that there was an adequate amount of safety clothing. At the end of the day before the incident, he checked and confirmed that there was an adequate amount of safety clothing for the next day.

You also note on the file an exchange of correspondence between Frank's attorney-at-law and Jill, an attorney-at-law at your firm, previously assigned to the file. Frank's attorney-at-law wrote urging the firm to settle on the basis of his proposition that:

“Since you are unable to adduce evidence to contradict our assertion that there was no safety clothing available at the specific time of the incident, you cannot succeed in this claim.”

Jill responded by relying on her proposition that:

“He who asserts must prove. Your client has brought this claim. Therefore, my client only has an evidential burden to adduce evidence to raise doubt as to your assertion that there was no safety clothing available.”

Advise on the correctness of each of their propositions. Give reasons.

QUESTION 3

In a murder case in the Supreme/High Court of your jurisdiction, the judge heard a no case submission by the defence counsel at the close of the prosecution’s case. The prosecution’s case was based solely on circumstantial evidence.

The defence counsel’s submission was based on the premise that each item of circumstantial evidence, on its own, must be sufficient to establish a *prima facie* case against the accused. He submitted that the evidence adduced by the prosecution had not satisfied that requirement.

The judge adjourned the trial to consider the no case submission. He asks you, as his judicial clerk, to advise him on the correctness of the legal position advanced by defence counsel. He also informs you that, in any event, he considers the circumstantial evidence in the case, as a whole, to be *“thin, perhaps very thin”*.

Advise the judge, whether in all of the circumstances, he should uphold the no case submission.

QUESTION 4

- (a) Stephanie and Peter had a troubled marriage, and Peter had a history of physically abusing her. Stephanie's brother, John, was present on the last violent attack by Peter on Stephanie, when Peter brandished a knife and wounded both Stephanie and John.

Advise on Stephanie's competence and compellability to testify for the prosecution against Peter in the following circumstances:

- (i) Where Peter is indicted on a single count indictment for wounding Stephanie with intent.
 - (ii) Where Peter is indicted on a single count indictment for wounding John with intent.
- (b) Assume on the facts mentioned above, that Stephanie's twelve-year-old son, Paul, was present during the incident.

Briefly advise whether he can give sworn or unsworn evidence for the prosecution, and the requirements to be met, if any.

QUESTION 5

Legislation was introduced in your jurisdiction to combat a serious and escalating crime problem. The legislation in question, The Curfew Act ("the Act") allowed the relevant minister to impose a curfew in areas he deemed extremely volatile.

The Act also made it an offence to breach a curfew. The relevant part of the Act reads as follows:

"Any person in breach of a curfew under this Act is guilty of an offence unless such person is, of necessity, en route to his place of employment, or en route to a doctor or hospital in the case of a medical emergency."

Stephen, a late-night radio talk-show host, had to travel to and from his workplace during the night-time curfew in his area. He was arrested and charged for breaking the curfew. When arrested by the police, Stephen, an open opponent of the Curfew Act, remained silent during questioning by the arresting policeman, before and after caution.

At Stephen's trial, the prosecution adduced evidence of Stephen's breach of the curfew, and closed its case without any evidence of Stephen's purpose of travel in the area under curfew. Stephen's attorney-at-law made a no case submission, on the basis that the prosecution had not established that Stephen was not of necessity en route to his place of employment, a doctor or hospital. No issue as to the constitutionality of the legislation was raised.

The judge ruled against the no case submission on two grounds. Firstly, he said that the Act imposed a burden on the accused to prove beyond reasonable doubt that he was of necessity en route to his place of employment, a doctor or hospital. Secondly, he said that, in any event, Stephen's pre-trial silence, upon being arrested, was a basis to infer his guilt of the offence.

In response to the judge's ruling, Stephen, on the advice of his attorney-at-law, elected to remain silent and not call witnesses. He was convicted.

Stephen now seeks your advice as to whether he has good grounds of appeal.

Advise him, giving reasons.

QUESTION 6

There has been a worldwide outcry by women against sexual harassment at the workplace, called the "I also" movement, and this has spread to your jurisdiction.

Against this background, Harvey, a powerful bank executive, was arrested and charged for attempted rape of two of his former secretaries on separate occasions. The secretaries, Betty and Naomi, were employed at different times to Harvey, about a year apart.

Both Betty and Naomi, who had not reported their respective incidents to the police initially, explained that their recent reports were motivated by the “I also” movement. In their respective reports to the police, each complainant said that Harvey had asked her to stay late at work, and that is when the incident occurred. Each said she managed to escape and reported the incident to the human resource manager the next day. They both left their jobs because of the failure of the human resource manager to investigate the alleged incidents.

The indictment against Harvey contains two counts, one for the attempted rape of Betty, and the other, for the attempted rape of Naomi.

You are a junior prosecutor and your senior has asked you to advise him as to whether:

- (i) the evidence in relation to each count on the indictment is cross-admissible; and
- (ii) the fact of, and contents of, the complaints by Betty and Naomi to the human resource manager are admissible, and if so, on what basis.

Advise your senior.

QUESTION 7

Barry and David were neighbours in an upscale neighbourhood overlooking the sea. Barry was shot and killed in his yard while watering his plants. There were no eyewitnesses to the shooting, but Barry’s wife, Andrea, was in their house at the time Barry was shot.

Andrea gave a statement to the police to the effect that there was a long-standing dispute between Barry and David. It arose because David had built an extension to his house, which blocked Barry's view of the sea. Andrea went on to say that, on the day of the shooting, while she was in the house, she heard gunshots. She immediately rushed out to the yard, where she saw Barry slumped on the lawn. She said that Barry said to her, "David, my nemesis, my neighbour, shot me! I don't think I'll make it. I love you." Barry died in her arms.

The police arrested and charged David for the murder of Barry. When he was arrested, and after being cautioned, David replied, "I know nothing about who shot Barry. I have nothing to do with it."

Advise whether the verbal statements of Barry to Andrea, and David to the police, are admissible, and if so, the evidential value of each.

QUESTION 8

You are an attorney-at-law, who is occasionally invited by the police to give a guest presentation at seminars for trainees. The academy is scheduled to have a seminar to familiarise trainees with essential legal principles of the law of evidence. To this end, you have been invited to make a brief presentation, with reference to applicable statutory provisions and any Privy Council decisions from the West Indies on two aspects of cross-examination. These aspects are:

- (i) putting the case; and
- (ii) the circumstances under which a witness's previous inconsistent statement can be proven, the requirements to prove such a statement and its evidential value, if proven.

Prepare a draft presentation of the essential principles in relation to these aspects of cross-examination.

END OF PAPER