

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2019

LAW OF EVIDENCE AND FORENSIC MEDICINE

(AUGUST 00, 2019)

Instructions to Students

- (a) Time: 3½ hours
- (b) Answer QUESTION ONE and FOUR others.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, 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.

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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) Lacerated wounds;
  - (ii) Collection of trace evidence from the body of the female victim of a suspected rape homicide;
  - (iii) Types of thermal burns; and
  - (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) Drowning
  - (ii) Hanging
  - (iii) Adipocere formation
  - (iv) Stab wounds
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## PART B

### EVIDENCE

#### QUESTION 2

##### Answer both (a) and (b)

- (a) Oliver is the owner and driver of a motor car which was involved in a collision with Seth, a pedestrian, on a main thoroughfare. Seth was injured as a result of the collision.

Oliver was charged with dangerous driving and was separately sued by Seth for damages for negligence.

Oliver intends, at the criminal and civil trials, to give evidence that the collision was caused by Seth suddenly stepping into his driving path. In the civil proceedings Oliver had previously set out in his defence that the action on Seth's part amounted to negligence and was the cause of the collision.

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

- (b) There is an influx of imported plastic toys in your jurisdiction from a manufacturing company. A lobby group called, "Protect the Children" has raised awareness that these toys contain a poisonous substance, which, if above acceptable standards, can lead to retarded cognitive development.

In response to this, Parliament passed legislation called "The Plastics Act" ("The Act"), which, provided that:

*"Any person who imports or sells any plastic toy containing the poisonous substance 'factor X' in excess of 5% shall be guilty of an offence."*

Paul owns a toy store which sells popular plastic toys. He was charged for the sale of the toys contrary to the provision of the Act.

Advise Paul, giving reasons, on what legal and evidential burdens, if any, are to be borne by the parties and indicate any applicable standard of proof.

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### **QUESTION 3**

Frank was arrested and charged for the murder of Zhane. Both lived in a rural community.

On the day of the murder, the lifeless body of Frank's young daughter, was found with stab wounds in bushes near to Zhane's house. Later, that night, Zhane was murdered.

The prosecution's case against Frank was that he went to Zhane's house and chopped him to death in a vigilante killing, because he suspected Zhane had murdered his daughter.

At Frank's trial, Zhane's neighbour, Mark, gave evidence, despite objections from Frank's counsel, that, on that on the night in question, he heard Zhane shouting, "Frank, stop, stop! I never did it. I'm innocent! Murder! Murder!"

The investigating officer gave evidence that he went to Zhane's house that night based on an anonymous report, where he discovered Zhane suffering from chop wounds all over his body. He immediately rushed him to the hospital. The investigating officer gave further evidence that he spoke to Zhane, some two hours after at the hospital, and Zhane told him something. He said that based on what Zhane told him, he obtained a warrant for Frank's arrest. Zhane died at the hospital before he could give a written statement to the police.

Frank's defence at trial was alibi. He gave evidence that he was at home that night with his girlfriend. Frank was convicted of murder.

Frank seeks your advice whether he has good grounds of appeal.

Advise him, giving reasons.

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#### **QUESTION 4**

Gary, Tony and Bryan are housemates who were involved in a dispute, during which, Bryan was stabbed. Gary and Tony had accused Bryan of stealing their money. After the incident, Gary and Tony left the house and Bryan called the police. The police arrived on the scene shortly thereafter and Bryan made a report to the police. Later that day, on their return home, the police arrested Gary and Tony and took them to the police station.

While under arrest, Tony was cautioned and advised of his right to counsel. He indicated that he wished to waive his right to counsel. He told the police that he was not present at the scene of the incident. However, later in the same interview, he eventually admitted that he was in fact present, but he did not know that Gary had a knife. He said it was Gary who stabbed Bryan.

Tony's older brother, Roy, subsequently gave a statement to the police. In that statement, he said that he knew Gary because he would often visit their home and that Gary and Tony were best friends from school days. He said that after the incident, Gary admitted to him that it was he, Gary, who stabbed Bryan.

Gary and Tony were jointly charged for wounding with intent.

At the trial the judge allowed the prosecution to lead evidence of Tony's different accounts to the police. Roy also gave evidence for the prosecution in accordance with his statement to the police.

You are a junior prosecutor assigned the file. Your senior has asked you to advise him whether the trial judge should give any special directions to the jury.

Advise him, giving reasons.

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#### **QUESTION 5**

Don is the reputed head of 'the Vendetta Gang', a notorious gang in your jurisdiction involved in extortion and the illicit drug trade. The gang has a reputation for exacting revenge on its enemies by torture, in particular, by inflicting stab and chop wounds.

The complainant, a businessman operating a wholesale store in the same community in which the gang members live, was chopped and severely wounded by two masked men with cutlasses at his store. He gave a statement to the police to the effect that three days before he had resisted attempts by members of the 'Vendetta Gang' to extort money from him.

Karl, one of the attackers and a member of the gang, turned himself in to the police. He entered into an agreement with the prosecution to give evidence against Don in return for immunity from prosecution. In his statement to the police, he admitted that he, along with Lee, the other masked man, wounded the complainant on Don's order.

Don and Lee were subsequently arrested and jointly charged with wounding with intent. The trial is pending.

The prosecution also has a statement on its file from Andrew, the head of a department in the police force entrusted with the collection of information on gangs. The prosecution intends to call him to give expert evidence of the membership and modus operandi of the 'Vendetta Gang', and that Don is its reputed leader.

You are a junior prosecutor assigned to the file. Your senior has asked you to advise him as to:

- (a) whether the trial judge should give any special directions to the jury as to Karl's evidence, and if so, the contents of such directions; and
- (b) the basis on which Andrew can give expert evidence as to the membership and modus operandi of the 'Vendetta Gang', and if so, the guidelines to be followed for the reception of his evidence.

Advise your senior, giving reasons.

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## **QUESTION 6**

Jerry is charged with wounding with intent and his trial is pending.

There is a statement under caution on the prosecution's file allegedly given and signed by Jerry admitting to the commission of the offence. The prosecution intends to rely on it.

Jerry retained you to represent him at the trial. His instructions were that the police beat him and forced him to sign a statement they had prepared.

Jerry seeks your advice:

- (i) whether there is a basis to challenge the admissibility of the statement under caution, and if so, he asks you to outline and explain, the procedure in relation to this;
- (ii) if the statement under caution is admitted into evidence, whether defence counsel can still put forward, as part of the defence's case, the assertion that Jerry had been beaten and forced to sign the statement under caution; and
- (iii) if the statement under caution is admitted into evidence, whether the judge should give any special directions to the jury in relation to Jerry's case that he was beaten and forced to sign the statement.

Advise Jerry, giving reasons.

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## **QUESTION 7**

Bill, a well-known pastor, was charged for the rape of a young adult lady in his congregation.

The complainant, Sally, gave a statement to the police approximately a month after the incident. She said that her delay in giving her statement to the police was because of her conflicted emotions arising from her respect for the pastor and her desire for justice. In her statement, she alleged that the pastor committed the offence during one of their counselling sessions.

At Bill's trial, Sally, during examination-in-chief, was unable to recall when the counselling began and the number of sessions she had with Bill. The prosecutor sought permission from the judge to have her refresh her memory from her statement regarding this issue. The judge allowed it, despite an objection from Bill's counsel, on the basis that the statement was non-contemporaneous.

Later in the trial, the prosecutor indicated to the court that he was unable to locate the original handwritten statement of Sally. Bill's counsel was forced instead to cross-examine Sally on a typed copy of the statement purporting to bear Sally's signature, which had been supplied to him previously by the prosecutor. Although Sally admitted it bore her signature, the judge stopped Bill's counsel from cross-examining to prove inconsistencies between her evidence and the typed copy, on the basis that the witness had not admitted that it was her original statement.

The judge also stopped Bill's counsel cross-examining another prosecution witness, Maria, who gave evidence that she saw Sally flee from the premises where the counselling session was held. Bill's counsel's cross-examination was to prove inconsistencies between Maria's evidence and a statement she gave to a private investigator hired by Bill's counsel. The judge stopped the cross-examination on the basis that Maria maintained that she felt intimidated into giving her statement to the investigator.

Bill was convicted and now seeks your advice as to whether he has grounds of appeal.

Advise Bill, giving reasons.

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### **QUESTION 8**

Sheryl was arrested and charged for fraud-related offences, in relation to significant sums of foreign currency she obtained from elderly persons abroad. The allegations against her are that she falsely pretended to be an agent of a lottery company and fraudulently obtained the money from the victims by false pretences. She told them that they had won the lottery but had to send to her, by remittance, processing fees to facilitate the payment of the winning sums.

Sheryl and her husband had been under covert surveillance by the police, but Sheryl's husband fled the jurisdiction and so escaped arrest.

Sheryl gave a statement under caution to the police. In it, she said her husband was the mastermind and beneficiary of the fraud. She further said that she had been physically abused by him and forced to participate in the fraud by his threats to kill her unless she did.

At Sheryl's trial, her statement under caution was admitted into evidence on the prosecution's case. Sheryl gave evidence that her husband was physically abusive to her and she committed the fraud because of threats by him. However, the trial judge ruled against her giving evidence of the actual words used by her husband. The trial judge ruled that those words would amount to inadmissible hearsay evidence.

In the course of delivering the verdict, the trial judge referred to Sheryl's statement under caution. He said that it was admissible only to show Sheryl's reaction and attitude under arrest, but nothing further. He went on to find Sheryl guilty.

Sheryl seeks your advice as to whether she has good grounds of appeal.

Advise her, giving reasons.

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**END OF PAPER**