

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2019

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 10, 2019)

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.**

- (a) 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.

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) Classification of burns according to depth;
 - (ii) Collection of trace evidence from the body of the female victim of a suspected rape homicide;
 - (iii) Adipocere formation; and
 - (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) Livor mortis;
 - (iii) Cadaveric spasm; and
 - (iv) Abrasions.
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PART B

EVIDENCE

QUESTION 2

Answer both (a) and (b)

- (a) Frank was a patron at a concert, in your jurisdiction.

Frank was among 60 persons on a platform for VIP patrons, which collapsed during the concert. Frank sustained serious injuries. He filed a claim against two companies jointly for negligence in the High/Supreme Court. These two companies were Champ Promotions Limited, the promoter of the concert, and Party Platforms Limited, which had built and rented the platform in question to Champ Promotions Limited.

Frank's claim in negligence is based on his allegation that the persons allowed on the VIP platform exceeded the maximum safety limit of 30 persons.

You are an attorney-at-law at the law firm representing Champ Promotions Limited, and your firm has filed a defence denying negligence on its client's part. The case management conference in relation to the claim has been held and an order was made for standard disclosure by all 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 confidential report from a structural engineer, addressed to your client, after the commencement of Frank's claim, confirming that the maximum limit was 30 persons;
 - (ii) correspondence from you to Champ Promotions Limited, recommending settlement of Frank's claim; and

(iii) correspondence between your firm and Frank's attorney-at-law in a failed 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. Give reasons.

QUESTION 3

Joe, a policeman, was tried for causing grievous bodily harm/grievous harm with intent arising from an incident at Peter's house. Joe and another policeman had gone to Peter's house to execute a warrant for the arrest of Peter for failing to attend court for a traffic offence.

Peter, in his evidence, admitted to using expletives to Joe at the time of the arrest. He said that Joe became incensed at this, and in retaliation, severely beat him (Peter) with a baton causing a fracture to his leg.

Joe, on the other hand, in his defence, gave evidence that while he was leading Peter from the home, Peter attacked him with a kitchen knife. The defence tendered and had admitted into evidence a kitchen knife which it asserted was recovered from the scene. Joe's evidence was that he struck Peter in self-defence in those circumstances.

The prosecuting attorney-at-law cross-examined Joe to the effect that at no time did Peter have a knife, but failed to specifically put to Peter that the knife allegedly recovered from the scene was planted by the police.

Joe, also adduced evidence of his good character and absence of previous convictions.

The trial judge's direction to the jury included the following:

“Members of the jury, the defence has sought to raise the defence of self-defence. To that extent the defence has an evidential burden, but only to satisfy you on a balance of probabilities that Joe acted in self-defence.

The defence has also adduced evidence of the good character of the accused but that is not a defence and can only be relevant if you find him guilty.”

Joe was convicted and now seeks advice as to whether there is a good ground of appeal on the basis of the prosecution’s failure to put its case that the police planted the knife. He also seeks advice as to whether the trial judge erred in his directions to the jury.

Advise Joe, giving reasons.

QUESTION 4

Raymond is charged for the murder of his third wife and his trial is pending. His third wife’s lifeless body was found by the police floating in the swimming pool of the matrimonial home after Raymond had reported his discovery of the body in the pool.

The prosecution intends to call the twelve-year-old son of the couple, Albert, as a witness. Albert had given a statement to the police that he had heard his parents quarrelling, and then saw Raymond drag the apparent lifeless body of his mother into the pool.

The police, in its investigation, unearthed that Raymond’s two previous wives had also been found dead in the pools at their respective matrimonial homes. The police also discovered that in relation to all three wives, Raymond had taken out life insurance policies, naming himself as the beneficiary. Raymond had never been charged in relation to the deaths of his two previous wives.

After the death of Raymond's third wife, he married Patricia, who gave a statement to the police stating that Raymond persuaded her to take out an insurance policy naming him as the beneficiary.

Advise on:

- (a) the admissibility of the evidence of the drownings of Raymond's two previous wives, and the taking out of the insurance policies as part of the prosecution's case; and
- (b) the competence and compellability of Albert and Patricia as witnesses for the prosecution.

QUESTION 5

You are a junior prosecutor in the Director of Public Prosecution's/Attorney General's department in your jurisdiction. You are assigned conduct of a file involving a charge against a prominent pastor, the trial of which is pending. It is alleged that he raped a young adult lady, a member of his congregation, when she visited his office for counselling.

You are concerned about interference with the complainant, possibly by the pastor or members of his congregation. In particular, your concern is that the complainant may go into the witness box, be sworn and refuse to give evidence or give evidence materially contrary to her account in her statement to the police.

You also noted that in her statement to the police, the complainant said she told her mother what had happened. Her mother declined to give a statement to the police.

There is also a written statement to the police under caution from the pastor on the file. In his statement, he admitted to having had sex with the complainant, but asserted that it was consensual.

Your senior has asked you to advise on the following:

- (a) the options open to the prosecution if the complainant is sworn but refuses to give evidence, or gives evidence materially contrary to her statement;
 - (b) the admissibility of evidence from the complainant that she told her mother what happened; and
 - (c) the evidential value, if any, of the pastor's statement to the police under caution, if admitted into evidence on the application of the prosecution.
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QUESTION 6

David and Andrea, 18-year-old American citizens and university students, were charged in your jurisdiction for possession of cocaine, and their trial is pending.

Both had visited your jurisdiction for spring break vacation. They had rented a hotel room which they had jointly occupied. The police, acting on information, obtained a search warrant for the hotel room and searched it in their presence. They found a small quantity of cocaine hidden behind the refrigerator.

David and Andrea were arrested and taken to the police station, where they were both charged jointly for possession of cocaine. The police then separated them for the purpose of questioning. David and Andrea were informed of their right to counsel. Each of them declined and said they were eager to cooperate.

David gave a written statement under caution after being charged, in which he admitted that he had purchased the cocaine, but said that Andrea knew nothing about it.

Andrea also gave a written statement under caution after being charged. She gave the statement under caution without any threat or violence on the part of the police. She did so after the police

told her that it was in her best interest to do so because they would not oppose bail if she were to admit knowledge of the cocaine in the hotel room. They also told her that she would get a lighter sentence, if she did so. In her written statement under caution, Andrea said that she knew of the cocaine but had nothing to do with its purchase or use. She further said that David had purchased it for his personal use.

You are junior counsel in the Office of the Director of Public Prosecution/Attorney General's Department.

Advise your senior on the following:

- (a) the evidential value of David's written statement under caution, if admitted into evidence at trial on the prosecution's case;
- (b) whether there are bases to challenge the admissibility of Andrea's written statement under caution, giving reasons; and
- (c) the evidential value of Andrea's written statement under caution, if admitted into evidence at trial on the prosecution's case.

QUESTION 7

Due to the inadequacies of the public transport system in your jurisdiction, there is an abundance of unlicensed public passenger vehicles called "robot taxis", which are known to compete for passengers in an undisciplined manner.

Scott, the driver of one such vehicle, was charged for manslaughter, arising from an accident involving his vehicle, resulting in the deaths of and injuries to several passengers. The trial of the charge before a jury is pending.

The prosecution's case at trial is that Scott was driving recklessly by excessive speeding, while the vehicle was carrying passengers well beyond the maximum capacity allowed. In particular, the prosecution alleges that Scott was racing with another vehicle at the time of the accident, and that he lost control of his vehicle which collided into a light pole. He only managed to survive without injuries because the impact was not to the driver's side of the vehicle, and only the driver's airbag was deployed.

Statements to the police from the following witnesses are on the prosecution's file:

- (a) a statement from a passenger, Andrew, who recently died. Andrew's statement supports the prosecution's case, and so the prosecution intends to have it admitted under legislation in your jurisdiction that allows this;
- (b) a statement from a police telephone operator, Jane, as to an emergency telephone call to her from someone in the vehicle seconds before the accident. Jane said that the passenger was hysterical, and in fear of it crashing. The passenger was asking for a patrol car to stop the vehicle because the driver was racing and refusing to slow down. The passenger gave the licence number of the vehicle, which turned out to match the actual licence number. The passenger died in the accident; and
- (c) a statement from Zane, another robot taxi driver plying the route of the accident, and who knows Scott. Zane picked up Scott from the scene because an angry crowd was gathering and took him to the nearest police station. Zane said in his statement that he told Scott that persons at the scene and survivors were accusing Scott of racing another vehicle. Zane said he also asked Scott how the accident happened. Scott remained silent throughout and shrugged his shoulders.

Advise the judge on the following, giving reasons:

- (i) whether to give special directions to the jury if Andrew's statement is admitted into evidence and, if so, the content of such directions;

- (ii) whether Jane should be allowed to give evidence at the trial of what the passenger told her in the course of the emergency telephone call; and
 - (iii) whether Scott's silence in response to what Zane said and asked has any probative value.
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QUESTION 8

The training academy for police officers in your jurisdiction invites you, a prosecutor, to summarize the law on certain identification issues.

In particular, you are asked to:

- (i) define "confrontation identification" and indicate if and when it is admissible;
- (ii) define "dock identification" and indicate if and when it is admissible, and if so, state the content of any special directions to the jury; and
- (iii) state the content of any special directions to the jury in disputed identification cases.

Prepare a summary addressing these issues with reference to Privy Council cases from the West Indies.

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