

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2017

LAW OF EVIDENCE AND FORENSIC MEDICINE

(FRIDAY, MAY 12, 2017)

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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A
FORENSIC MEDICINE

QUESTION 1

COMPULSORY

- (a) Write short notes on each of the following:
- (i) Lacerated wounds
 - (ii) Adipocere formation
 - (iii) Entry and exit gunshot wounds
 - (iv) Classification of burns according to depth
- (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) Contusions
 - (iii) Stab wounds
 - (iv) Cadaveric spasm
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PART B

EVIDENCE

QUESTION 2

- (a) A hotel in your jurisdiction, Relax Resorts, through its management company, was sued by several tourists. They had been injured while in one of the hotel's elevators when it went into free fall for a short distance. You are the attorney-at-law for the hotel. The tourists are all represented by a single firm of attorneys-at-law.

The case management conference in relation to the claim has been held and an order for Standard Disclosure by both parties has been made.

Describe the essentials of the requirements to comply with such an order for Standard Disclosure.

- (b) Assume on the facts at (a) above that your client's file contains the following documents:
- (i) A report from the elevator company responsible for the maintenance of the elevator at your hotel. The report predates the incident and recommended that certain parts of the elevator be replaced. The parts were not replaced prior to the incident.
 - (ii) A confidential report to the hotel from an expert engineering company hired by the hotel after the incident. The report concluded that the incident was caused by the hotel's failure to replace the parts mentioned at (i) above.
 - (iii) Correspondence from you to the hotel, your client, recommending settlement of the claim.

Describe how these documents should be treated by your client in the process of compliance with the order for Standard Disclosure.

QUESTION 3

- (a) A statute in your jurisdiction prohibits bird shooting in certain “protected areas” without a licence from an agency called “The Wildlife Authority”. The statute provides that:

“Anyone shooting any bird without a licence from the Wildlife Authority in a protected area designated as such by the said Authority is guilty of an offence.”

Cain and Abel were members of a group from a gun club on a bird shooting expedition in a protected area. During the expedition Cain was shot and injured by shotgun pellets from Abel’s shotgun. Abel was quickly arrested and charged by the police for shooting Cain with intent on the basis of investigations that showed that the two had a bitter business dispute. At the time of his arrest, Abel was unable to produce a licence from the Wildlife Authority, although he then claimed to have one. Consequently, the police also charged him for bird shooting in a protected area without a licence.

Abel intends to defend both charges. On the shooting with intent charge, he intends to assert accident. On the bird shooting without a licence charge, he intends to assert that he did have a licence at the material time.

What burden(s), if any, and standard(s) of proof, if any, apply to these separate proposed defences?

- (b) Assume on the facts of (a) above that Cain has also filed a civil claim for damages against Abel in which Cain alleges that Abel deliberately shot him or, in the alternative, negligently did so. Abel, in turn, has filed a defence alleging the shooting was accidental and, in the alternative, that Cain was negligent. Abel alleges that Cain was negligent in that he was wrongfully in an area that the expedition had agreed would be in the line of fire for shooting birds.

What burden(s), if any, and standard(s) of proof, if any, apply in relation to Abel's allegation of negligence against Cain?

QUESTION 4

Paul is a wealthy celebrity and entertainer in your jurisdiction. He is charged for the rape of a young actress, June, who had auditioned for a part in a movie he was producing in your jurisdiction.

The prosecution's allegations are that Paul raped June at his house after he had invited her there, ostensibly to discuss her audition. It is alleged that he committed the offence at his house after she had been drugged.

In order to prove that June was drugged, the prosecution intends to call Joe, Paul's chauffeur. Joe had originally been charged with aiding and abetting the rape after confessing to the police that he had picked up June and had driven her to Paul's house on Paul's instructions. He will say that, while they were in the car, he gave her a drink containing a drug, also on Paul's instructions. The prosecution offered no evidence against Joe in order to call him as a witness.

The prosecution also intends to call the investigating officer who has given a statement to the effect that Paul, after being properly cautioned, when first questioned by the police, denied that June had ever been to his house. However, the investigating officer further stated that Paul later admitted that she had been there, and that they had consensual sex. Paul further denied drugging her and maintained that June had set him up in order to "get at his money".

Advise as to what special directions, if any, may or should be given by the trial judge and the content of any such directions.

QUESTION 5

The Director of Public Prosecutions/Attorney General's department in your jurisdiction is in urgent need of prosecutors. In these circumstances the department is forced to recruit young graduates "fresh" from law school.

One such graduate is about to appear on his own for the first time in a murder case. The main witness for the prosecution is from a volatile community and will be giving evidence against the leader of a gang terrorizing the community. Indeed, apparently because of the fear pervading the community, the witness gave his statement to the police approximately a month after the murder in question.

You are a senior prosecutor in the department and the young graduate has come to you for advice in advance of the upcoming trial. He is particularly concerned that this vulnerable witness may be unable to recall important details, or may "shift" in the witness box, by significantly and intentionally deviating from his statement while giving evidence in examination-in-chief. He is also concerned about the scope he has, if any, to rehabilitate his witness' credibility after cross-examination.

Summarize the advice you will give to the "fresh" graduate as regards:

- (i) refreshing the witness' memory both prior to the witness giving evidence and while giving evidence;
- (ii) any option open to him in relation to any significant deviation by the witness in examination-in-chief from his statement to the police; and
- (iii) the scope of re-examination.

QUESTION 6

Stacey, who is married to Mark, is charged for the murder of Mark's mistress, Mary. The prosecution's allegations are that Stacey, in her car, trailed Mary to her home and when Mary alighted from her car to open the gate, Stacey shot her several times and sped away.

The prosecution proposes to rely on the following witnesses and items of evidence:

- (i) Mary's neighbour who will say that, on hearing gunshots and Mary's distressed cry for help, she rushed to Mary's side and heard her cry out, "The person who shot me is Stacey, Mark's wife!" Mary then lost consciousness and was later rushed to the hospital.
- (ii) The investigating officer, who will say that he went to the hospital and was there some five hours later when Mary briefly recovered consciousness after emergency surgery. Further, that based on his conversation with Mary, he immediately obtained a warrant for the arrest of Stacey. (At the time he had not yet interviewed Mary's neighbour.)
- (iii) A bystander who saw the incident, made a report to the police and later identified Stacey on an identification parade.

You are a junior prosecutor in the case and you have been asked to advise your senior on whether:

- (a) there are bases to challenge the items of evidence at (i) and (ii) above as hearsay;
and
- (b) the trial judge should give any special directions as to the bystander's identification of Stacey (assuming identification is in issue) and the contents of such directions.

QUESTION 7

- (a) Conrad and Donald are jointly charged for the murder of a businessman outside his business place which is in the same community where Conrad and Donald lived.

The police had gone to the home of Conrad because of an anonymous tip that he had transported the gunman to and from the scene of the murder.

While at Conrad's home, the Inspector of police told Conrad of their information. He further told Conrad that if he were to give a full statement naming the gunman, he would receive a light sentence and be back with his family in a short time, based on his cooperation. Conrad then gave a statement under caution to the Inspector, after the Inspector advised him of his right to consult an attorney-at-law.

Conrad's statement was to the effect that Donald had hired him to take him to the businessman's place of business to collect extortion money from the businessman. Conrad maintained in the statement that he did not know Donald was armed. He said he heard gunshots at the scene and, realizing Donald's crime, transported him back to the community because he was fearful of him. On the basis of Conrad's statement under caution, he was then arrested and charged. Donald was also later arrested and charged.

At the joint trial of Conrad and Donald, Conrad's attorney-at-law challenged the admissibility of Conrad's statement in a *voir dire* in the absence of the jury. Conrad's attorney submitted that Conrad's statement was not voluntarily given. The prosecutor in response contended that it was given voluntarily because no force or threat was administered by the Inspector and Conrad was duly cautioned and advised of his right to an attorney-at-law. Further, he submitted the police had acted in good faith.

Donald's attorney-at-law submitted that if the judge were to admit Conrad's statement into evidence it should be edited to omit all references to Donald because those references had a prejudicial effect outweighing their probative value. Conrad's attorney-at-law, in response, submitted that if Conrad's statement were to be admitted then it

should be admitted in its entirety without editing in order for the jury to “make sense of it”.

Advise on the rulings the trial judge should give in relation to these submissions.

- (b) Assume on the facts above that the trial judge admits Conrad’s statement in its entirety. Can the prosecutor cross-examine Donald, if Donald gives evidence in his defence, by confronting him with Conrad’s statement under caution? Also, should the judge give any special directions to the jury as to its evidential value, if any, against Donald? Advise, giving reasons.

QUESTION 8

John and Mary were an adventurous European couple on vacation in your jurisdiction who had rented a villa in a remote area. One day the housekeeper for the villa discovered Mary’s dead body in the couple’s bedroom. Mary had been stabbed to death.

John gave a written statement under caution to the police. In the statement, he asserted that he had left Mary in the villa on the day in question, after he had quarrelled with her and had threatened to kill her over an affair with a local lover. He said he returned to discover that she had been stabbed, apparently by that lover, in a fit of jealousy. The police, however, eventually arrested and charged John for murder.

At his trial, John’s attorney challenged the admissibility of John’s statement under caution. However, after a *voir dire*, the judge ruled it admissible.

John later gave evidence in his defence. His evidence was to the effect that he and Mary had been snorting cocaine to the point where he was suffering from hallucinations. He gave evidence

that he was under the hallucination that Mary was an alien, and in those circumstances he stabbed her to death.

The trial judge gave directions to the jury about John's statement to the police under caution and his defence at trial. His directions were as follows:

"Members of the jury, I ask you to disregard the statement of the accused to the police under caution and his assertion he had nothing to do with Mary's death. It was admitted only to the extent that it showed the attitude of the accused on arrest and has no other evidential value.

Even if the statement of the accused under caution had evidential value, that has been destroyed by the evidence of the accused today at trial. The evidence of the accused is that he committed the offence in circumstances which would reduce the offence from murder to manslaughter. Therefore his evidence is inconsistent with his statement to the police under caution. Thus, that statement has been rendered worthless."

John is convicted and seeks your advice as to whether he has grounds of appeal. Advise him, giving reasons.

END OF PAPER