



PROGRAM: LLB

MODULE: LAW OF EVIDENCE AND LITIGATION TECHNIQUES

CODE: BWR0000/ LEL41Y0 SUPPLEMENTARY AND SICK EXAMINATION

DATE: 01 DECEMBER 2021 (08:00– 12:00)

DURATION: 4 HOURS

TOTAL MARKS: 80

EXAMINER: PROF D S DE VILLIERS

MODERATOR: MS M DU PREEZ

NO OF QUESTIONS: EIGHT (5 PAGES)

INSTRUCTIONS:

Answer all questions.

You should be able to complete the paper in three hours. You do, however, have four hours available. Leave enough time to submit on time.

You have three attempts to complete the paper, but only your last attempt will be marked. Submit your answers in word or pdf format on Blackboard.

This is an open-book exam, and you are allowed to consult any of your material. You are not allowed to consult with or obtain assistance from any third party.

Use your own words, write in essay format, and refrain from a copy and paste approach. Take note that SafeAssign will pick up similarities.

With case scenario questions, read the entire set of facts, before you start to answer and make sure you answer the specific question. Be aware of multiple admissibility issues.

You are allowed to answer the questions in any order but mark them clearly.

Take note of marks allocated.

Take note of the indication of time to use when answering each question.

Refer to relevant decided cases and other authorities where possible.

By answering this paper, you acknowledge and accept the University's rules on plagiarism and dishonest behaviour.

QUESTION 1 [+/- 15 minutes]

The accused, *Abel*, in an assault with the intention to do grievously bodily harm case, denies that he was the person at the scene where the assault took place. His defense is an alibi.

The victim, *Ann*, testifies that she told the doctor who treated her injuries: "*It was Abel who burnt me several times with a cigarette on my breasts.*" When the prosecutor wanted to call the doctor to testify about the report by *Ann*, the defense objected. Discuss how you as magistrate would handle this objection. (5)

QUESTION 2 [+/- 45 minutes]

After their criminal trial, accused no 1, *Simon* and accused no 2, *Jane*, were convicted of attempted housebreaking with the intent to steal. *Simon* had three previous convictions for attempted housebreaking and *Jane* a previous conviction for perjury.

The prosecution lead evidence of the three previous convictions, where *Simon* had each time been arrested in the late hours of the night attempting to open a shop door using one of a bunch of keys. The prosecution's case was that also in this case *Simon* and *Jane* were trying different keys in the keyhole of a shop entrance door.

Jane testified that she was simply sheltering from the rain, did not see any keys, and had she known of *Simon's* inclination to break into shops, she would not have consented to his suggestion that they take shelter there. She denied that she had any previous conviction where after the prosecutor cross-examined her and handed in a document (SAP 69) to prove her previous conviction.

Simon's attorney accused the police of "planting" the keys on him the night of his arrest. *Simon's* three previous convictions were also handed in.

You are an advocate and is asked by the accused's attorney for advice on *Simon* and *Jane's* chances to take the convictions on appeal. (15)

QUESTION 3 [+/- 15 minutes]

Sipho rushes into the charge office, while heavy under the influence of liquor and says to constable *Dlamini*, (peace officer): “*Arrest me now. I have just shot my wife!*” During the subsequent murder trial, the state advocate intends to call *Dlamini* to testify about the statement *Sipho* made to him. Discuss whether this will be admissible. **(5)**

QUESTION 4 [+/- 60 minutes]

A rugby player, from a club in Durban, Mr X, was charged with assault with the intent to do grievous bodily harm as the result of an incident that happened in the parking area of the club, just after a rugby game. The prosecutor tendered as evidence a video, with a clear picture of how Mr X hit the victim Mr Y with a beer bottle in the face. There is also a sound recording where one can hear a voice saying, “*This will teach you a lesson not to be such a bad referee.*” The video was received from an employee at the club, Mr Z. He got the tape from a CCTV camera that was installed in the parking area. It seems that part of the video tape was edited out of sequence and in slow motion. Mr Z since emigrated to Australia and will not be able to testify as witness.

- (i) At a trial within a trial, the prosecutor argued that the admissibility of the video tape was to be determined on the same basis as that of still photographs because it was real evidence. She also argued that even if she is wrong the tape will still be admissible as documentary evidence.
- (ii) The prosecutor wanted to hand in the video tape without calling Mr Y on the basis of two statutory provisions.
- (iii) The attorney of the accused disagreed and stated that a video tape is documentary evidence and it should be inadmissible because of the tampering.
- (iv) He also wanted to call a professor in audio-visual technology as a witness.

You are the presiding officer and are required to discuss all the admissibility issues and give your motivated ruling. **(20)**

QUESTION 5 [+/- 15 minutes]

“Corroboration must be from an independent source”. Critically discuss this statement. **(5)**

QUESTION 6 [+/- 45 minutes]

Explain to a non-law student how the different strategies may influence the outcome of a negotiation. Also consider an international approach to negotiations. **(15)**

QUESTION 7 [+/- 15 minutes]

Your client came to you for advice after he received a visit from the police. They warned him that they know he was present when a suspect raped a woman and that he must come to the charge office to make a statement. They also explained to him that he is a competent and compellable witness and does not have a choice not to testify. Your client informed you, that he is too afraid to testify after he received death threats and warnings that his family will be harmed if he testifies. Explain to your client the legal situation related to his concern. **(5)**

QUESTION 8 [+/- 30 minutes]

You are asked by a client to take the presumption in section 24 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 to the Constitutional Court because your client feels that it is unconstitutional. Write a short commentary with the focus on the incidence and the quantum of proof. (In bold) **(10)**

Section 24 Presumptions

“Whenever a person is charged with an offence under Part 1 or 2, or section 21 (in so far as it relates to the offences) of Chapter 2, proof that that person, or someone else at the instance of that person-

- (a) accepted or agreed or offered to accept any gratification from; or
- (b) gave or agreed or offered to give any gratification to,

any other person-

- (i) who holds or seeks to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organisation, corporate body or other organisation or institution in which the person charged was serving as an official; (ii) who is concerned, or who is likely to be concerned, in any proceedings or business transacted, pending or likely to be transacted before or by the person charged or public body, private organisation, corporate body, political party or other organisation or institution in which the person charged was serving as an official; or
- (iii) who acts on behalf of a person contemplated in subparagraph (i) or (ii),

and, if the State can further show that despite having taken reasonable steps, it was not able with reasonable certainty to link the acceptance of or agreement or offer to accept or the giving or agreement to give or offer to give the gratification to any lawful authority or excuse on the part of the person charged, and in the absence of evidence to the contrary which raises reasonable doubt, is sufficient evidence that the person charged accepted or agreed or offered to accept such gratification from that person or gave or agreed or offered to give such gratification to that person in order to act, in a manner-

- (aa) that amounts to the-
 - (aaa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bbb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (bb) that amounts to-
 - (aaa) the abuse of a position of authority;
 - (bbb) a breach of trust; or
 - (ccc) the violation of a legal duty or a set of rules;
- (cc) designed to achieve an unjustified result; or
- (dd) that amounts to any other unauthorised or improper inducement to do or not to do anything.

TOTAL: [80]