



PROGRAM: LLB
MODULE: LAW OF EVIDENCE AND LITIGATION TECHNIQUES
CODE: BWR0000/ LEL41Y0
DATE: 15 JULY 2020 (08:00 – 11:00)
DURATION: 3 HOURS
TOTAL MARKS: 50
EXAMINER: PROF D S DE VILLIERS
MODERATOR: MS M DU PREEZ
NO OF QUESTIONS: 7 (3 pages)

INSTRUCTIONS:

Answer all questions.

You should be able to complete the paper in two hours. You do, however, have three hours available.

You have three attempts to complete the paper, but only your last attempt will be marked.

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.

With case scenario questions, read the entire set of facts, before you start to answer.

Take note of marks allocated.

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

Refer to relevant decided cases where possible.

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

Question 1 [+/- 18 minutes]

Briefly discuss why the date 30 May 1961 is so important with reference to the South African Law of Evidence. (5)

Question 2 [+/- 54 minutes]

H is charged with raping J. The prosecution alleges that H met J through an escort agency, took her to a club and then raped her afterwards at her flat. K, who is J's flatmate, testifies that she came home later that night and found J weeping. When asked whether 'Something had been done to her', J said that H had raped her. There is medical evidence from Dr D that J had bruises to her face and upper thigh area. Dr D also stated that he found that there had been sexual intercourse and that force had been used. H's friend, M, testifies that H had mentioned to him at the club that he was planning to have sex with J that night, "whether she wanted it or not".

The defence wishes to establish that J consented to sex with H. Defence counsel wishes to cross-examine J to the effect that she has met a number of men through this particular dating agency and has invariably agreed to have sex with them. Discuss any evidential issues arising. (15)

Question 3 [+/- 18 minutes]

Briefly discuss the example in the South African Law of Evidence where no party is allowed to consent to inadmissible evidence. (5)

Question 4 [+/- 36 minutes]

You are the magistrate in a case in which Mrs Agro is charged with malicious injury to property. The prosecutor alleges that the accused was hawking flowers door to door with her daughter, Jill, aged 6. Mr and Mrs Stuck Up refused to buy from her. As she left she allegedly kicked down the garden gate in anger. Harry, the Stuck Up's 20 year old son, who has the mental age of an 8 year old, was looking out the window when this happened. The prosecution wishes to call Jill and Harry as witnesses. The defence objects and you need to make a motivated ruling. (10)

Question 5 [+/- 18 minutes]

The "interpretation section" of the South African constitution has also an influence on the Law of Evidence. Discuss. (5)

Question 6 [+/- 18 minutes]

Tanya witnessed an attempted break-in at a jewellery shop and claims she saw a car speed away from the scene. She phoned the police and dictated the car registration number to Sergeant Ford who wrote it down in his notebook. You are the prosecutor and it was your intention to call Tanya to testify but two weeks before the trial date she passed away. Discuss how you would go about to get Tanya's evidence to be admitted. (5)

Question 7 [+/- 18 minutes]

Discuss when can a competent and compellable witness, with no privilege available to him, refuse to answer questions. (5)

Total: [50]

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