



PROGRAM: LLB
MODULE: LAW OF EVIDENCE AND LITIGATION TECHNIQUES
CODE: BWR0000/ LEL41Y0
DATE: 16 NOVEMBER 2019 (MAIN EXAMINATION)
DURATION: 3 HOURS
TOTAL MARKS: 100
EXAMINERS: PROF D S DE VILLIERS
MODERATOR MR E J HANEKOM
NO OF PAGES: 5
INSTRUCTIONS:

1. ANSWER ALL QUESTIONS
2. REFER TO RELEVANT DECIDED CASES WHERE POSSIBLE

QUESTION 1

In August 2018, *Ann* witnessed the murder of her boyfriend, *Charles*. She told Constable *Crane* that her husband, *Andre*, committed the murder. She stated that *Andre* shot *Charles* with his grey 9mm pistol and then put *Charles* in the boot of his blue Jeep with the registration number BADBOY GP. *Ann* repeated the statement to Sergeant *Sam* at the police station. *Ann* is prepared to testify against her husband. Will the evidence about what she told *Crane* and *Sam* be admissible evidence against the accused, *Andre*? Briefly discuss. (5)

QUESTION 2

In 2015, *Matt* (a cattle farmer) suffered major losses after the death of 80 of his cattle. *Matt's* neighbor (*John*) similarly suffered losses after 40 of his cattle died. On further investigation, it was determined that the cattle died due to food poisoning. Both *Matt* and *John* bought their feed from *Happy Farmfeed Ltd*. *Matt* decided to sue *Happy Farmfeed Ltd*, for the monetary losses that he has incurred due to the death of his cattle and for damages. He wants to call *John* to testify about the losses that he also suffered. Discuss whether *John's* evidence will be admissible in court. (5)

QUESTION 3

Distinguish between "evidence" and "probative material." (5)

QUESTION 4

You are the senior prosecutor at Randburg's magistrate's court. One of your junior prosecutors came to you for advice. He wants to know if he will be allowed to call the wife of an accused who was just 3 days before admitted as a mental patient at Weskoppies Mental hospital. The accused allegedly assaulted her 10 year old son from a previous marriage. He (the junior prosecutor) would also like to know if he can ask the mental patient about what her husband told her the evening after the assault. Fully advise your colleague. (15)

QUESTION 5

You appear on behalf of the accused (X) in a robbery case. The prosecutor calls the eye witness, *Doris* (an 88 year old woman) to the stand. *Doris* states that, from 100 meters away, she saw X walk into the bank with a gun and walk out of the bank with a bag full of money in one hand and the gun in the other. The prosecutor then asks *Doris* to read a particular part of her statement into the record. *Doris* struggles to read the document but insists that her eyesight is fine. Under cross - examination, you put it to her that you are going to call an optometrist to prove that she is lying. Are you allowed to do that? Discuss. (5)

QUESTION 6

Mrs *Unhappy* is suing the *Rest in Peace Hospital Company (RIPH)* for negligently causing the death of her husband during an operation in which the drug *Happydreams* had been administered to Mr *Unhappy* by Dr *Corpsemaker*, one of the hospital's doctors. Consider the issues in the law of evidence relating to the following items of evidence:

- (a) A research paper by Prof *Drug Expert*, in which he warns of the dangers of administering *Happydreams* where a patient's heart rate is above a particular level. The paper is published in the medical journal "*Bones and Skeletons*". Prof *Drug Expert* is unavailable to give evidence in the case.
- (b) Two computerised documents produced by advanced computers at the *Prosperity* hospital and *Peaceful* hospital recording the effects of administering *Happydreams* to two patients during an operation. The computer controlled the administration of the drug during each operation according to a programme fed into it by research scientists. In each case the computer recorded the amount of the drug fed into the patient and the resultant change in heart rate. (15)

QUESTION 7

Write a short commentary on *Haupt 2018 1 SACR 12 (GP)* (Corroboration and Cautionary rules). (5)

QUESTION 8

Name five situations or factors which facilitate communication in the consultation process. (5)

QUESTION 9

The accused is being charged with murder. He admits that he killed the deceased but alleges that the killing was not intentional and also that he was suffering from hallucinations during the incidence. The prosecutor argues that the burden of proof rests with the accused to prove both defences as a presumption exists that a person intends the natural and probable consequences of his actions to ensue. Discuss briefly and also state what influence the Constitution may have on evidential presumptions. (5)

QUESTION 10

Illustrate by way of examples what you understand by a leading question. What constitutes the leading question rule at evidence in chief and cross-examination? Are there any exceptions to the rule? Discuss. (5)

QUESTION 11

Do you agree with the viewpoint of *Mosaka* about the application of the *Blom* rules in the *Oscar Pistorius* case? Discuss. (5)

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QUESTION 12

You are the prosecutor in a case where you allege that the accused sold uncut diamonds to a police agent (trap). The accused pleaded not guilty and stated in his explanation of plea that:

- (i) he wasn't aware of the fact that it was real diamonds and that he sold it as artificial diamonds.
- (ii) in anyway, he didn't know that to sell uncut diamonds is a crime and that the stones were not expensive at all.

Discuss step by step the possible ways in which you would go about to prove the facts in issue. (10)

(See the attached annexure.)

QUESTION 13

Carl and *Syd* are involved in a motor vehicle collision on April 1 at a bend on *Barry Hertzog Street*. *Carl* sues *Syd* for negligence in crossing the double white line. *Syd* claims he was swerving to avoid a large tree that had fallen across his lane, which he couldn't see in time to stop. *Syd* asks you as magistrate to take judicial notice of the fallen tree. You live on *Barry Hertzog Street* and know about the fallen tree. Discuss the evidential issue that arises. (5)

QUESTION 14

One dark night in July, *Tom O'Shanter* took off his blue Dri-mac and jeans, and raced naked on horseback on the UJ campus. Constable *Capable* (peace officer) noticed him and followed him on his scrambler. *Tom's* horse bolted due to the noise and *Tom* was thrown into the fountain – unconscious. *Capable* dragged him out of the fountain, put him in the van of a colleague and later locked him up in an empty, cold cell. The following morning *Capable* went to check whether *Tom* had regained consciousness. Before *Capable* could do or say anything, *Tom* – still naked – said: "I did take the horse from one of the stables at the race course, but please get me something warm to wear."

At *Capable's* request, *Tom* later pointed out the stables from which the horse had been removed and only at that moment, did the owner of the horse discover that it was missing. *Tom* is charged with theft. At the trial, *Capable* testifies that *Tom* declared that he had taken the horse and that he showed him where this happened.

Is any of this evidence admissible? Discuss. (10)

TOTAL: (100)

Annexure

Section 212(5) of Act 51 of 1977 as amended by section 11 of Act 5 of 1991

“Whenever the question as to the existence and nature of a precious metal or any precious stone is or may become relevant to the issue in criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is an appraiser of precious metals or precious stones, that he is in the service of the State, that such precious metal or such precious stone is indeed a precious metal or a precious stone, as the case may be, that it is a precious metal or a precious stone of a particular kind and appearance and that the mass or value of such precious metal or such precious stone is as specified in that affidavit, shall, upon its mere production at such proceedings, be prima facie proof that it is a precious metal or a precious stone of a particular kind and appearance and the mass or value of such precious metal or such precious stone is as so specified.”

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