



UNIVERSITY
OF
JOHANNESBURG

PROGRAM: LLB

MODULE: LAW OF EVIDENCE AND LITIGATION TECHNIQUES

CODE: BWR0000/ LEL41Y0

DATE: 12 JUNE 2018 (08:30 – 10:30)

DURATION: 2 HOURS

TOTAL MARKS: 60

EXAMINERS: PROF D S DE VILLIERS
MISS K REDDI

NO OF PAGES: 4

INSTRUCTIONS:

1. ANSWER ALL QUESTIONS
2. REFER TO RELEVANT DECIDED CASES WHERE POSSIBLE
3. WRITE PARTS A AND B IN SEPARATE ANSWER BOOKLETS AND
CLEARLY INDICATE PART A OR PART B ON THE TOP OF EACH
BOOKLET

REQUIREMENTS:

1. TWO EXAMINATION SCRIPTS

PART A: PROF D S DE VILLIERS

QUESTION 1

Distinguish between "burden of proof" and "*quantum of proof*" (5)

QUESTION 2

Melanie is charged with animal cruelty and common assault on her husband. Her attorney wishes to adduce evidence to the effect that she generously donates funds to the SPCA and that she volunteers much of her time to animal welfare organisations.

As the Magistrate in this case, discuss whether you will admit this evidence. (5)

QUESTION 3

Write a short commentary on *Njiva* 2017 1 SACR 395 (ECM)
(Similar Fact Evidence). (5)

QUESTION 4

Mr Banks and Romeo are charged with the murder of Mrs Banks on the 10th of January 2018. Romeo alleges that the murder of Mrs Banks was commissioned by Mr Banks, who offered Romeo R1 million to kill his wife. Mr Banks and Romeo enter into a contract, which provides that should Romeo be unable to commit the murder, Romeo must return the 10% deposit, which was paid to him as an advance. It appears that both Romeo and Mr Banks signed the contract. At the trial, Mr Banks denies that he signed the contract. The prosecutor, however, wants to show that Mr Bank's fingerprints are all over the contract. The prosecutor also wants to call Ms Tracy who can testify that Romeo told her that he had an interesting discussion with Mr Banks on the 2nd of January 2018, about a request to get rid of his wife.

As the presiding officer in this case, determine whether the above-mentioned evidence will be admissible or not. (15)

Sub total: (30)

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PART B: MISS K REDDI

QUESTION 5

Cathy is uncertain about the legality of a recent business transaction. She goes to see Alan, an attorney recommended by a friend. During an initial free consultation, she tells Alan what she has done and asks whether her actions were unlawful. Alan says Cathy has probably broken the law, but he is uncertain and it would cost Cathy R3000 for the research necessary to find the answer. Cathy decides to take her chances. Later Cathy is prosecuted for fraud. Discuss whether Cathy can prevent Alan from revealing what she told him about the transaction. (5)

QUESTION 6

Write a short commentary on *Attorney General Tvi v Kader* 1991 4 SA 727 (A) (Competence and Compellability). Also discuss Skeen's comments as found in 1992 SALJ 587. (10)

QUESTION 7

In June 2014, Lucy was charged with arson and fraud. The prosecutor alleges that Lucy intentionally set fire to her home in Randburg so that she could collect insurance money. Lucy alleges that the fire was an accident that happened because she mistakenly left her hair iron on her bed at full heat and rushed off to work. When the prosecutor introduces evidence that Lucy has burned down properties on two previous occasions, Lucy argues that on both incidences, the fires were ruled 'accidental fires' by the investigating officers.

The forensic investigator (who investigated the latest fire incident), states under oath that the fire in question was without any doubt caused intentionally. The forensic investigator states that "the fire started on the bed. Lighter fluid was found on the corners of the mattress and on parts of the blanket. The chemical residue from the lighter fluid was found all over the bed, dressing table and on the floor. The most

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likely scenario is that the accused tried to make it look like an accident, put the hair iron on the bed while it was plugged into the wall socket, threw lighter fluid on the bed and then lit the fire using a lighter. The accused would have probably had enough time to leave the house before everything caught on fire.”

Sandile, Lucy’s ex-boyfriend, agreed to testify against Lucy at the trial. In a statement to Police Officer Jenkins, Sandile explained that Lucy told him that she needed money to pay off all her debts and that she had previously collected insurance money. In his written statement, he reiterated that Lucy admitted to him that she had set fires to collect insurance money on two previous occasions. On the morning of the trial, Sandile dies in a motor vehicle accident.

As the presiding officer in this case, discuss whether all the evidence submitted, or parts thereof, are admissible against Lucy. (15)

Sub total: (30)

TOTAL: (60)

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