



**PROGRAM:** LLB

**MODULE:** LAW OF EVIDENCE AND LITIGATION TECHNIQUES

**CODE:** BWR0000 / LEL 41Y0

**DATE:** EXAMINATION 16 NOVEMBER 2017

**DURATION:** 08:30 – 11:30

**WEIGHT:** 50: 50

**TOTAL MARKS:** 100

**EXAMINERS:** PROF D S DE VILLIERS  
MS K REDDI

**NUMBER OF PAGES:** 4 (COVER PAGE INCLUDED)

**INSTRUCTIONS:** ANSWER ALL QUESTIONS  
  
REFER TO RELEVANT DECIDED CASES WHERE POSSIBLE  
  
ANSWER THE TWO PARTS ON DIFFERENT BOOKS AND INDICATE CLEARLY PART A OR PART B

**REQUIREMENTS:** 2 EXAMINATION SCRIPTS

**PART 1 (PROF D S DE VILLIERS)**

**QUESTION 1 (± 8 MINUTES)**

Distinguish between “Evidence” and “Probative material” with reference to examples. (5)

**QUESTION 2 (± 30 MINUTES)**

You are the prosecutor. The accused, who was employed by the Department of Defence, is investigated for the possibility that he committed corruption under the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PRECCA). It is alleged that he had corruptly signed five similar contracts to buy firearms from foreign companies and arranged for money to be paid into Swiss bank accounts on his behalf. For three of the contracts you have employees from the foreign companies to testify that they did meet with the accused on different dates but at the same venue and signed the specific contracts. For the remaining two contracts you cannot get hold of the people who contracted with the accused and only have copies of the contracts available.

You are requested to address the court on whether all or only some of the contracts will be admissible. Fully discuss all the admissibility issues. (15)

**QUESTION 3 (± 8 MINUTES)**

Write a short commentary on *Prins* 2017 1 SACR 20 (WCC) (Opinion Evidence) (5)

**QUESTION 4 (± 8 MINUTES)**

Illustrate by way of examples what do 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 5 (± 40 MINUTES)**

*Mary* is an 8-year old girl who witnessed an assault on her 9-year old friend, *Joyce*. The alleged assault happened when according to *Mary*, the accused *James*, threw a bottle at *Joyce* and caused serious injuries to her face. *James* defense is that it wasn't him who threw the bottle and that *Mary* should not be allowed to testify. Discuss as prosecutor all the steps that must be considered in relation to the admissibility, the court procedures and the weight of the evidence of *Mary*. (20)

**QUESTION 6 (± 16 MINUTES)**

Discuss the factors that inhibit communication as well as the factors that facilitate communication in the consultation between a legal practitioner and his client. (10)

**Sub total: (60)**

**PART 2 (MS K REDDI)**

**QUESTION 7 (± 10 MINUTES)**

In May 2014, *Buddy* witnesses the robbery of a bakery. When questioned, *Buddy* describes the perpetrator as a tall man with brown eyes. *Buddy* described the perpetrator as wearing an orange hoodie and blue jeans with purple Nike shoes. *Buddy* assists a sketch artist in drawing up an identikit and a week later, picks the accused out of a line-up of seven similar looking men. Two years later, *Buddy* takes the stand as a state witness. He is, however, unable to remember the details regarding the appearance of the perpetrator. You, as the prosecutor in this case, would like to lead evidence regarding *Buddy's* identification of the perpetrator. Discuss any potential admissibility issues that may arise. (5)

**QUESTION 8 (± 20 MINUTES)**

*Sofia* is charged with the murder of *Juan Pablo*. When *Sofia* was arrested, she made the following statement to Sergeant *Alex* (a Peace Officer): "*He threatened to rape me again. So I ran into the bedroom, grabbed the gun from the nightstand and shot twice. He deserved what was coming to him.*" *Sofia* then accompanied Captain *George* (Justice of the Peace) to a fishpond where the gun was found. Discuss *Sofia's* statement and the evidence of Sergeant *Alex* and Captain *George*. (10)

**QUESTION 9 (± 8 MINUTES)**

Write a short commentary on *Phiri* 2014 1 SACR 211 (GNP) (Judicial Notice). (5)

**QUESTION 10 (± 8 MINUTES)**

Briefly discuss the main strategies of negotiation. (5)

**QUESTION 11 (± 10MINUTES)**

*Sandra* is charged with insurance fraud. After arranging that her house be burgled, she claimed the value of all the 'stolen' property from her insurance company. *Sandra's* brother, *Daniel*, makes the following statement to the investigating officer: "*I heard Sandra discussing the burglary with Mr Spencer, her lawyer. Spencer told her to ask her ex-husband to keep all the goods - under the pretense that she was moving out of her house and that she would collect her stuff after a month.*"

Discuss whether Mr *Spencer* may be called to give evidence against Sandra. (5)

**QUESTION 12 (± 20 MINUTES)**

Mr *Meanie* is charged in the Regional court of assaulting mr *Whine* with the intention to do grievously bodily harm. *Meanie's* defence is that he acted in self-defence. Discuss the nature and incidence of the burden of proof. Also indicate who would have the burden of proof, and why, if mr *Whine* were to institute civil proceedings against mr *Meanie* and *Meanie* were to raise the same defence. (10)

**Sub total: (40)**

**TOTAL: (100)**