



PROGRAM: LLB

MODULE: LAW OF EVIDENCE AND LITIGATION TECHNIQUES

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EXAMINERS: PROF D S DE VILLIERS
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INSTRUCTIONS: ANSWER ALL QUESTIONS
REFER TO RELEVANT DECIDED CASES WHERE
POSSIBLE

REQUIREMENTS: 2 EXAMINATION SCRIPTS
COMPUTER ANSWER SHEET

PART 1

Question 1

- (a) Section 3 (1) (c) (vii) about hearsay allows the court a limited discretion.
- (b) Under Common law it was inadmissible for a spouse to testify either for or against the other spouse.
- (c) Real evidence should be marked exhibit A, B, C etc.

- 1. Only statement (a) is correct
- 2. Only statements (a) and (c) are correct
- 3. Only statement (c) is correct
- 4. All three statements are correct
- 5. All three statements are wrong
- 6. Only statement (b) is correct

Question 2

- (a) The fact that a cross-examiner merely questions whether a witness withheld certain information, which has now become apparent, should not lead to the witness's previous consistent statement now becoming admissible.
- (b) An expert may express his opinion on a matter which is difficult to explain other than by opinion.
- (c) In *Damalis* 1984 (2) SA 531 (T) the court held that the cross-examiner could not suggest or insinuate that he would (or could) rebut the collateral answer by the witness.

- 1. Only statement (a) is correct
- 2. Only statements (a) and (c) are correct
- 3. Only statement (c) is correct
- 4. All three statements are correct
- 5. All three statements are wrong
- 6. Only statement (b) is correct

Question 3

- (a) If a document is in possession of a third party, he can be compelled to bring the document to court by means of a *subpoena duces tecum*.
- (b) The state cannot call an accomplice as a witness for the prosecution.
- (c) Letters written during settlement negotiations must contain the words "without prejudice".

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 4

- (a) The practice by the police to use officers from the same investigating unit to record confessions, has solicited biting criticism over the years.
- (b) Pointings out are also regarded as informal admissions by conduct.
- (c) Even though the statements may have been made entirely in good faith (bona fide) the settlement statement privilege will fall away if the attempt at settlement constitutes: an act of insolvency; an offence; or an incitement to commit an offence.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 5

- (a) As far as South African Law is concerned, the court is an expert itself and any opinion expressed thereon by a witness is inadmissible as evidence.
- (b) In terms of section 197 of the Criminal Procedure Act evidence about the accused person's previous convictions may be admissible if the accused person gave evidence about his own good character.
- (c) Audiotapes are apparently mainly regarded as documentary evidence.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 6

- (a) The ideal is to have expert evidence evaluated by lay-assesors.

- (b) Even if a child understands the nature and importance of the oath, he or she must be admonished to speak the truth.
 - (c) Similar facts not only refer to the act as element of the crime or delict but may also be important in establishing things like motive, intention and other inferences that may be necessary to prove.
1. Only statement (a) is correct
 2. Only statements (a) and (c) are correct
 3. Only statement (c) is correct
 4. All three statements are correct
 5. All three statements are wrong
 6. Only statement (b) is correct

Question 7

- (a) A mere assertion by an accused that he cannot recall anything of the incident will not of necessity require that he be examined by an expert. He must, at least, lay a basis for such allegation by adducing evidence about that fact.
 - (b) In terms of section 196(1) of the Criminal Procedure Act the accused is now fully competent to testify in his own defence at any stage during the trial.
 - (c) Where the fact in issue is whether a person was able to commit a crime, or whether he had the means, or whether there was an opportunity to commit the crime, similar facts may be used to prove such a fact in issue.
1. Only statement (a) is correct
 2. Only statements (a) and (c) are correct
 3. Only statement (c) is correct
 4. All three statements are correct
 5. All three statements are wrong
 6. Only statement (b) is correct

Question 8

- (a) A lay person is allowed to express an opinion on the sanity of another, provided that he gives the grounds upon which he bases his opinion.
- (b) If a witness becomes incompetent to testify during the course of the trial the evidence given prior to him becoming incompetent will always stand.

(c) Presently section 195 of the Criminal Procedure Act provides that the husband or wife of the accused shall be competent in all cases to give evidence for the prosecution in criminal proceedings.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 9

- (a) A warning that the factual situation should be correctly put to the expert before he is asked to comment thereon, is sounded in *Zwane* 1989 3 SA 253 (W).
- (b) Advocates and attorneys may testify in cases where they appear, but it is most undesirable.
- (c) To rebut an allegation of recent fabrication as exception of previous consistent statements is mainly applicable when dealing with re-examination.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 10

- (a) The opinion of an expert, although it may be admissible, will not have much probative value and any conflicting evidence will be sufficient to rebut it.
- (b) The undefended accused should not be invited to give his consent to the admissibility of hearsay evidence.
- (c) According to *Hewan v Kourie* 1993 3 SA 233 (T) reliability as such should be incorporated as an additional requirement for admissibility.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct

5. All three statements are wrong
6. Only statement (b) is correct

Question 11

- (a) Substantive law is also known as formal law or law of procedure
- (b) Because section 3(1)(a) requires express consent, there can be no question of tacit or implied consent.
- (c) If one accepts that the burden of rebuttal and the burden of proof are opposites, it follows logically that, if in principle the burden of proof shifts, then the burden of rebuttal does not shift.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 12

- (a) If the state can show that the accused does not need access to the docket for purposes of a fair trial, disclosure will not be necessary.
- (b) The evidence of a trap is suspect for the very reason that he has a motive to have the accused convicted.
- (c) .The physician may read the report he compiled into the record.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 13

- (a) If a witness denies his previous statement, it may be proved against him.
- (b) The shaken condition of the complainant in S 1990 1 SACR 5 (A) could serve as corroboration for her insistence that she was raped.

(c) According to Schmidt the relevance requirement demands that the fact about which evidence is to be presented must possess a minimum degree of probative force regarding the facts in issue.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 14

- (a) The rule against self-serving statements is explicitly embodied in statutory law.
- (b) The appellate division has also expressed itself against the view that multiple cautionary rules may apply to the evidence of the same witness.
- (c) Beyond reasonable doubt is the same as reasonably possibly true.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 15

- (a) Our judicature makes it clear that the inference which is drawn from circumstantial evidence (although sometimes referred to as a factual presumption) is not the same as a judicial presumption.
- (b) An admission becomes admissible if the prosecutor proves two requirements.
- (c) If only one of the parties has information about a fact in issue, this is no reason for burdening him with the burden of proof.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 16

- (a) A dispute about the admissibility of evidence is regarded as a legal question which may not be settled by means of a trial within a trial.
 - (b) Similar facts will be admissible to rebut any possible defence that the accused may raise.
 - (c) Where expertise is explicitly or by implication being put into dispute the party disputing the evidence must lay down a basis for the expert witness.
-
- 1. Only statement (a) is correct
 - 2. Only statements (a) and (c) are correct
 - 3. Only statement (c) is correct
 - 4. All three statements are correct
 - 5. All three statements are wrong
 - 6. Only statement (b) is correct

Question 17

- (a) The spouse who made the statement is entitled to the privilege.
 - (b) In *Hewan v Kourie* the court warns that hearsay should not be dealt with according to the old stereotyped approach.
 - (c) Expert evidence has little value if it is not linked to the facts of the case.
-
- 1. Only statement (a) is correct
 - 2. Only statements (a) and (c) are correct
 - 3. Only statement (c) is correct
 - 4. All three statements are correct
 - 5. All three statements are wrong
 - 6. Only statement (b) is correct

Question 18

- (a) Observations of witnesses may only be admitted if they don't contain inferences.
 - (b) In *Yelani* 1989 2 SA 43 (A) the court decided that a court is not entitled to reject exculpatory portions of a statement while accepting incriminating parts thereof.
 - (c) In order to distinguish between the two standards, "reasonably possibly true" and "on balance of probability" it is necessary to distinguish between two "types" of *prima facie* cases.
-
- 1. Only statement (a) is correct

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2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 19

- (a) Where a witness has not been informed of his privilege against self-incrimination, the incriminating statements cannot be used against him in subsequent proceedings.
- (b) The real reason for the inadmissibility of hearsay evidence is that it is irrelevant.
- (c) Inferences are drawn from circumstantial evidence and therefore magistrates should follow logical rules in order to avoid speculation.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 20

- (a) Secondary evidence implies that better evidence exists.
- (b) The various ways in which cautionary rules are complied with, do not form a *numerus clausus*.
- (c) Where the accused in an assault case raises the defence of an alibi, he must prove that on a balance of probabilities.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 21

- (a) The defense has a duty to put its version to the State witnesses.
- (b) In *Faltein* 1990 2 PH H 105 (E) it was said that everybody can testify that a substance is in fact dagga. Such identification does not require special knowledge or expertise.

(c) The identity of the trap is protected from disclosure.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 22

(a) "Proof beyond reasonable doubt" does mean proof beyond a shadow of doubt.

(b) In *Yende* 1987 3 SA 367 (A) to determine whether a statement is a confession, the court favours a subjective test.

(c) In terms of section 39 of the Constitution the court may take notice of international law.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 23

(a) The inference that a specific state of affairs still exists may not be drawn if it is proved that it existed in the past.

(b) The so-called "doctrine of recent possession" is a legal presumption.

(c) Before the evidence of an incompetent witness becomes admissible the opposite party must first consent.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 24

(a) A common law presumption that a letter was delivered operates with letters sent by certified mail.

- (b) An accused may corroborate the evidence of state witnesses.
- (c) Corroboration is, with the exception of certain sections of Act 51 of 1977, not a prerequisite.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 25

- (a) Because an accused has a right to remain silent and is also not obliged to incriminate himself, an adverse inference may not be drawn from his failure to provide an explanation.
- (b) When dealing with the rule against collateral facts the question is not relevant and therefore inadmissible.
- (c) Whether a witness is an expert on a specific subject is a question of fact.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 26

- (a) Section 228 of the Criminal Procedure Act provides that an expert may identify the writing or signature of a person.
- (b) The mental capacity required for competence as a witness is considerably more than that required for capacity to act.
- (c) The old statutory exceptions to hearsay did fall away with the new act.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 27

- (a) The evidence of a co-accused will always be considered with caution.
 - (b) Section 209 of the Criminal Procedure Act provides that a conviction may follow on a confession only if the offence is proved by other evidence.
 - (c) The court should judge every circumstance in isolation.
-
- 1. Only statement (a) is correct
 - 2. Only statements (a) and (c) are correct
 - 3. Only statement (c) is correct
 - 4. All three statements are correct
 - 5. All three statements are wrong
 - 6. Only statement (b) is correct

Question 28

- (a) In *Claassen* 1976 2 SA 281 (O) Steyn J decided that opinion evidence may sometimes be admissible without stating the grounds upon which the opinion is based.
 - (b) An accused may if he prefers give his testimony without the oath from the dock.
 - (c) Section 212 of the Criminal Procedure Act makes provision for evidence to be adduced only by means of a sworn affidavit.
-
- 1. Only statement (a) is correct
 - 2. Only statements (a) and (c) are correct
 - 3. Only statement (c) is correct
 - 4. All three statements are correct
 - 5. All three statements are wrong
 - 6. Only statement (b) is correct

Question 29

- (a) A person who conforms to the definition of section 194 of the Criminal Procedure Act is competent to testify - compellability is then the next consideration.
 - (b) If a party fails to disclose an available document it may not be inferred that that document is detrimental to his case.
 - (c) Admissible hearsay evidence can never amount to corroboration.
-
- 1. Only statement (a) is correct
 - 2. Only statements (a) and (c) are correct
 - 3. Only statement (c) is correct
 - 4. All three statements are correct

5. All three statements are wrong
6. Only statement (b) is correct

Question 30

- (a) Satisfactory evidence by the defence may not be rejected merely because the State witness had no reason to lie.
- (b) Today a prostitute's immoral lifestyle no longer taints her as a person with a tendency for mendacity, and corroboration is also not required.
- (c) An important effect of the admissibility of similar facts is that it may corroborate each other.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 31

- (a) A competent and compellable witness can refuse to take the oath or be affirmed if he has a privilege to rely upon.
- (b) A public document is a document: which has been drawn up by a public official, in the execution of a public duty, which is intended for public use, and to which the public has a right of access.
- (c) The privilege protecting communications between spouses is at present not applicable in the case of persons who have been married according to Indigenous law or custom.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 32

- (a) The ultimate issue doctrine means that a witness's opinion on one of the final or ultimate issues is inadmissible.

(b) If a witness does not achieve section 204 immunity and is subsequently prosecuted, his answers given in the first case cannot be used in evidence against him in the second case.

(c) The character of an opponent's witness is relevant, only to his credibility.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 33

(a) In *Zwane* 1993 1 SACR 748 (W) a policeman was asked whether he had been disbelieved in a previous trial. The witness denied this. The court said that evidence could be produced to rebut his denial.

(b) The reason for the rule against similar facts is based on the prohibition of self corroboration.

(c) The accused's spouse is not a competent witness for the defence.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 34

(a) A fact may be judicially noticed only if it is so unknown as to be incapable of dispute among reasonably informed and educated people.

(b) Before a copy of a document will be admissible it should first be certified as a true copy.

(c) A presiding officer has according to the common law discretion to relax the rule against hearsay.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct

4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 35

- (a) Previous exculpatory statements by an accused do not fall under the rule against previous consistent statements.
- (b) Documentary evidence should be marked exhibit 1, 2, 3 etc
- (c) If the previous statement consist of both admissions and self-serving statements, the whole statement is admissible.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 36

- (a) According to section 1 of the Law of Evidence Amendment Act, 45 of 1988, judicial notice may now formally be taken in respect of both indigenous and foreign law.
- (b) The "genuine and authentic- requirement" does not mean that the document's contents must be the truth.
- (c) The court may grant permission that a female be questioned regarding sexual intercourse or sexual experience.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 37

- (a) The definition of a document in *Secombe v Attorney Attorney* 1919 TPD 270 is wide enough to include film.
- (b) Even in civil cases if the fact of defamation has been established, the plaintiff's character is irrelevant to the amount to be awarded for damages.

(c) There are no fixed rules governing the burden of proof in statements made in mitigation of sentence.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 38

(a) Normally a party who calls a witness to testify on his behalf cannot impeach the credibility of his own witness by cross-examination.

(b) Evidence about a prior identification of the accused is always inadmissible as a previous consistent statement.

(c) The "Best evidence-rule" is not applicable where the contents of a document are admitted.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 39

(a) *Facta probanda* are facts which provide proof.

(b) Burden of rebuttal is the burden on a party to rebut *prima facie* proof in order to avoid a decision against him.

(c) The credibility of a witness may not be impeded by expert medical evidence which shows that the witness suffers from some physical or psychological defect or disability.

1. Only statement (a) is correct
2. Only statements (a) and (c) are correct
3. Only statement (c) is correct
4. All three statements are correct
5. All three statements are wrong
6. Only statement (b) is correct

Question 40

- (a) The nature of the South African system, which is based on the English Common Law of evidence, is characterised by a comprehensive set of rules aimed at including evidence.
- (b) Privilege is the right of only an attorney to withhold from court information relevant to an issue.
- (c) All relevant evidence are admissible, but not all admissible evidence are relevant.
1. Only statement (a) is correct
 2. Only statements (a) and (c) are correct
 3. Only statement (c) is correct
 4. All three statements are correct
 5. All three statements are wrong
 6. Only statement (b) is correct

SUB TOTAL: (20)

PART 2

QUESTION 1

During a rainstorm *Speedy* and *Conzales* were involved in a hit and run motor vehicle accident. *Speedy* whose Mercedes was written off, institutes an action for damages against *Conzales*, whose Volkswagen Beetle was only slightly dented. Moments after the accident occurred the driver of the Beetle drove off. *Conzales* admitted that he is the registered owner of the Beetle but denies that he was involved in the accident and that someone from his work must have borrowed his car. During the trial it become a point of dispute whether the road on which they were travelling had two lanes or four lanes and if *Conzales* was the driver at the time of the accident.

- (a) Discuss the incidence of the onus of proof. (5)
- (b) Is it necessary for any of the parties to supply evidence on this question, or can the problem be solved without any evidence being led? Discuss. (10)

QUESTION 2

Write a short commentary on *Magwaza* 2016 1 SACR 53 (SCA) (Admissions and Confessions) (5)

QUESTION 3

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.
- (c) The record of a disciplinary enquiry against Dr *Corpsemaker* in which the hospital's Board had found him guilty of negligence. The report had been forwarded to *RIPH's* internal lawyers in the event that the hospital was sued or prosecuted, and the hospital refused to give discovery of the document.
- (d) The conviction of *Corpsemaker* for recklessly causing death on a previous occasion at another hospital.

(25)

QUESTION 4

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

Albert Jones was driving the family car with his wife, *Bertha*, in the front passenger seat and their 15-year-old son, *Charles*, and six-year-old daughter, *Diane*, in the rear seats. The car was knocked off the road by an oncoming lorry. *Charles* was killed instantly, and *Bertha* and *Albert* both sustained cuts and bruises. *Diane* was very shocked, but sustained

no physical injury. Albert apologised to Bertha and told her that he is sorry but he was in a hurry to get home to be in time for a soccer match on the TV.

Albert has been charged with culpable homicide. *Bertha* made a statement to the police to the effect that *Albert* was driving on the wrong side of the road, could not negotiate a bend in the road and thus hit the lorry and was swept off the road; she now does not wish to testify for the prosecution.

(a) Discuss the admissibility of *Bertha's* evidence. (10)

Diane made this statement: "*Daddy was on the proper side of the road – Mommy's side was near the fence – I shouted very loudly when I saw a big lorry slide across the road towards our car.*" The attorney wants to call *Diane* as a witness.

(b) Discuss the admissibility of *Diane's* evidence. (5)

QUESTION 6

Write a short commentary on *Karrim v S* 2012 2 ALL SA 125 (SCA) (5)

QUESTION 7

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: (80)

TOTAL: (100)

