



PROGRAM: LLB
MODULE: LAW OF EVIDENCE AND LITIGATION TECHNIQUES
CODE: BWR0000/ LEL41Y0
DATE: EXAMINATION (PAPER C) JUNE/JULY 2022
DURATION: 2 HOURS
TOTAL MARKS: 60
EXAMINER: PROF D S DE VILLIERS
MODERATOR: MS M DU PREEZ
NO OF QUESTIONS: 9 (3 PAGES)

INSTRUCTIONS:

Answer all questions.

Questions must be clearly numbered but may be done in any order.

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

Take note of marks allocated and 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 [+/- 10 minutes]

Briefly compare, with reference to examples, the use of "compurgators" to "divine judgments" during the late Anglo-Saxon period in England. (5)

QUESTION 2 [+/- 10 minutes]

Distinguish between *Burden of proof*, *Burden of rebuttal* and *Quantum of proof*. (5)

QUESTION 3 [+/- 30 minutes]

The accused is charged with the indecent assault of a mentally ill person, Ms *Unfortunate*, who you as prosecutor, considers calling as a witness. After consultation with the superintendent of Weskoppies Mental Institution, Dr *Mental*, you feel strongly about your case. Dr *Mental* will not only testify about the fact that the complainant should be allowed to testify but she also mentioned to you that the accused has three previous convictions of indecent assault and only came out of prison two years ago.

You have in your docket a warning statement by the accused where he stated that he is a good person, would never do anything like this and was not ever imprisoned.

Discuss the admissibility of all the evidence of Dr *Mental* as well as how you would make use of a statutory provision when cross-examining the accused if he repeats his warning statement during his testimony in court. (15)

QUESTION 4 [+/- 10 minutes]

Write a short commentary on *S v Sigcawu* 2022 1 SACR 77 (WCC) (Hearsay evidence) (5)

QUESTION 5 [+/- 10 minutes]

The application of the Bill of Rights in our Constitution, as we find it in section 8, is divided into 4 sub sections. Subsections 1 and 2 differentiates between a vertical and horizontal approach with reference to who is bound by the Bill of Rights. Differentiate between these two approaches by referring to examples. How does this differ from the position in the United States of America? (5)

QUESTION 6 [+/- 20 minutes]

A hockey player from a club in Durban, was charged with assault with the intent to do grievous bodily harm as the result of an incident during a hockey game. The prosecutor tendered as evidence a video tape of the incident. Sections of the video tape were edited out of sequence and in slow motion. At a trial within a trial the prosecutor argued that the admissibility of the video tape was to be determined on the same basis as that of still photographs because it was real evidence. The attorney of the accused disagreed and stated that a video tape is documentary evidence and it should be inadmissible because of the tampering. You are the presiding officer and are required to discuss the nature of the evidence and all the admissibility issues and give your motivated ruling. (10)

QUESTION 7[+/- 10 minutes]

Discuss with reference to case law and a published case commentary, the concept "*a just excuse*". (5)

QUESTION 8 [+/- 10 minutes]

Explain to a friend what significant changes happened in 2007, as far as the old common law requirements for previous consistent statements are concerned. (5)

QUESTION 9 [+/- 10 minutes]

It was alleged that the accused, whilst in custody, wrote out a statement. When he was asked about it, he denied that he wrote anything and that somebody else must have written it. Should you as the prosecutor be allowed to call a finger print expert to proof that it was the accused who wrote the statement? Do not discuss opinion or documentary evidence. (5)

Total:

[60]

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