
MULTI CHOICE QUESTIONS

EVI301-A

2010 Second Semester – Assignment 1

Question 1

- (a) If the current South African law does not provide a solution to an evidentiary problem, our courts will first of all search for the answer in the early Roman-Dutch law.
 - (b) Evidence obtained in a manner that violates the Constitution will always be inadmissible.
 - (c) Substantive law indicates which procedure must be followed to prove a case.
 - (d) The “facts in dispute” in a particular case are heavily influenced by the applicable substantive law.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (a), (b) and (d) are correct.
 - (3) Only statement (c) is correct.
 - (4) Only statement (d) is correct.**
 - (5) All the statements are correct.

Question 2

- (a) In the case of a residuary clause, our courts have to determine what the English law was immediately before South Africa became a Republic in 1961.
 - (b) Roman-Dutch law is the common law of South Africa and therefore constitutes the historical source of our substantive and formal law.
 - (c) In terms of section 35(1) of the Constitution, every arrested person has the right to adduce and challenge evidence.
 - (d) A finding by a court that a particular piece of evidence is inadmissible due to irrelevance is final and cannot be reconsidered during the course of the same trial.
- (1) Only statement (a) is correct.**
 - (2) Only statements (a), (b) and (c) are correct.
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statements (a) and (d) are correct.
 - (5) All the statements are correct.

Question 3

- (a) A person is charged with fraud in that he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is hearsay evidence.
 - (b) A person is charged with fraud in that he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is evidence about previous consistent statements.
 - (c) The accused, in trying to dispute the admissibility of a confession made while he was in detention, wants to tender evidence that, on other occasions, the police have used improper means to get statements from him. This evidence is evidence of previous consistent statements.
 - (d) The accused is charged with dealing in dagga. The fact that the accused has previously been convicted of dealing in dagga is hearsay evidence.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (c) and (d) are correct.
 - (5) None of the statements is correct.**

Question 4

- (a) A similar fact may be distinguished from a previous consistent statement in that a similar fact will seldom, if ever, take the form of a statement.

- (b) Similar fact evidence can only be used by the state, since the law prohibits the accused from using similar fact evidence to his advantage.
 - (c) Section 197 of the Criminal Procedure Act 51 of 1977 protects an accused against answering certain questions during cross-examination, but this protection falls away where the accused gives evidence against any other person charged with the same offence or an offence in respect of the same facts.
 - (d) When evidence about someone's character is important for purposes of the law of evidence, the common law states that only evidence of the general reputation of such a person may be presented.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statement (c) is correct.
 - (3) Only statements (a), (c) and (d) are correct.**
 - (4) Only statement (d) is correct.
 - (5) All the statements are correct.

Question 5

Section 35(5) of the Constitution reads as follows:

- (a) "Evidence obtained in a manner that violates any right in the Bill of Rights can be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice."
 - (b) "Evidence obtained in a manner that violates any right in the Bill of Rights should be excluded if the admission of that evidence would be detrimental to the administration of justice or otherwise render the trial unfair."
 - (c) "Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice."
 - (d) "Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair and also be detrimental to the administration of justice."
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.**
 - (4) Only statement (d) is correct.

Question 6

- (a) In the case of an alleged offence of a sexual nature, evidence of a previous consistent statement will *inter alia* be admissible if the complaint was made at the first reasonable opportunity, but not later than 48 hours after the offence was committed.
 - (b) A number of principles have over time developed to ensure the fairness of an identification parade. One principle is that it is important that the people in the line-up do not wear similar clothes.
 - (c) There is question of a previous consistent statement when, during testimony in court, a witness repeats a statement consistent with one made on a previous occasion, in order to corroborate his evidence.
 - (d) There is question of a previous consistent statement when a witness repeats a consistent statement made by another witness on a previous occasion, which serves as self-corroboration for the other witness.
- (1) Only statements (a) and (c) are correct.
 - (2) Only statements (b), (c) and (d) are correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (c) and (d) are correct.**
 - (5) Only statement (d) is correct.

Question 7

In the course of a civil matter the plaintiff wants to present the record of a witness' testimony in a criminal trial based on the same facts, as evidence against the defendant. Consider the following statements:

- (a) The evidence will be hearsay evidence.

- (b) The evidence will be opinion evidence.

Later in the same civil matter the plaintiff wants to furnish the record of the court's finding in the previous criminal matter as evidence in the civil matter.

- (c) The evidence is admissible hearsay evidence.
 (d) The evidence is admissible opinion evidence.

- (1) Only statement (a) is correct.**
 (2) Only statements (b) and (d) are correct.
 (3) Only statements (a) and (c) are correct.
 (4) Only statement (d) is correct.
 (5) Only statements (b) and (c) are correct.

Question 8

- (a) If a witness in a criminal case tells the court that something was admitted or confessed by a non-testifying accused, such evidence strictly speaking amounts to hearsay evidence.
 (b) Hearsay evidence consists of oral evidence about that which a witness previously heard and wants to testify about in court. Hearsay can therefore never be in a written form.
 (c) The court's approach in *McDonald's Corp v Joburgers Drive-Inn Restaurant* 1997 (1) SA 1 (A) provides a good example of how the common law hearsay-exceptions should today be handled.
 (d) Although a court has a discretion to allow hearsay evidence, this discretion will more readily be exercised in criminal than in civil matters.

- (1) Only statement (a) is correct.**
 (2) Only statements (a), (b) and (d) are correct.
 (3) Only statements (a) and (c) are correct.
 (4) Only statement (b) is correct.
 (5) Only statements (b) and (d) are correct.

Question 9

- (a) A statement that contains a defence can never be a confession.
 (b) A confession can only be used as evidence in court if it was also reduced to writing at the time it was made.
 (c) If an accused gives evidence about a statement which is to his advantage and which forms part of an inadmissible confession, the otherwise inadmissible confession might become admissible.
 (d) If you make a confession to a friend (who is not also a peace officer), evidence about that confession will be inadmissible, unless your friend is also a justice of the peace.

- (1) Only statements (a) and (c) are correct.**
 (2) Only statements (a) and (d) are correct.
 (3) Only statement (d) is correct.
 (4) Only statements (b) and (c) are correct.
 (5) All the statements are correct.

Question 10

The investigating officer takes A, the accused in a murder case, to a place in the bush where A points out a pistol. "This is the pistol", he declares. Ballistic tests confirm that the pistol was used to kill the deceased. A's behaviour (not his statement) is:

- (a) a formal admission.
 (b) an informal admission.
 (c) an informal admission by conduct.
 (d) a confession by conduct.

- (1) Only statement (a) is correct.
 (2) Only statement (b) is correct.
(3) Only statement (c) is correct.
 (4) Only statement (d) is correct.
 (5) None of the statements is correct.

2010 May / June Examination**Question 1**

- (a) An admission of a fact in issue has, in appropriate circumstances, the same effect as a presumption. **2009 2nd – A1 q1(c)**
- (b) Criminal law and criminal procedural law forms part of the substantive law, whereas the law of evidence forms part of the formal or adjective law. **2010 1st – A1 q1(a)**
- (c) The “facts in dispute” in a particular case are heavily influenced by the applicable substantive law. **2010 2nd – A1 q1(d)**
- (d) Substantive law indicates which procedure must be followed to prove a case. **2010 2nd – A1 q1(c)**

(1) Only statements (a) and (c) are correct.

- (2) Only statement (c) is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (d) is correct.
- (5) None of the statements is correct.

Question 2

- (a) During a trial, the court first has to consider the competency of a witness, then the admissibility of evidence, and finally the weight or persuasive value of evidence. The “weight” of evidence therefore plays no part when the court considers the admissibility of that evidence. **2010 1st – A1 q2(a)**
- (b) Irrelevant evidence will never be admissible, but relevant evidence will always be admissible. **2008 1st – A1 q2(c)**
- (c) A finding by a court that a particular piece of evidence is inadmissible due to irrelevance is final and cannot be reconsidered during the course of the same trial. **2010 2nd – A1 q2(d)**
- (c) A person is charged with fraud in that he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is similar fact evidence. **2009 2nd – A1 q2(c)**

- (1) Only statements (a) and (d) are correct.
- (2) Only statement (b) is correct.
- (3) Only statements (b) and (c) are correct.
- (4) Only statement (c) is correct.
- (5) Only statement (d) is correct.**

Question 3 2009 2nd – A1 q3

The evidential value of a particular piece of evidence is important

- (a) only when determining the admissibility of that evidence
- (b) only during the evaluation of that evidence
- (c) both during the evaluation of that evidence and when determining its admissibility
- (d) when that evidence is similar fact evidence
- (e) when that evidence is evidence about a previous consistent statement

- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (c) and (d) are correct.**
- (5) Only statements (c), (d) and (e) are correct.

Question 4 2009 2nd – A1 q10

In the course of presenting the state’s case on a charge of escaping from prison, the prosecution wants to present evidence about the accused’s latest previous convictions. Consider the following statements:

- (a) The evidence is admissible in terms of section 211 of the Criminal Procedure Act 51 of 1977.
- (b) The evidence is expert evidence and inadmissible.

During the same case the prosecution also wants to present evidence regarding a previous conviction for escaping from prison, during which the accused followed the same *modus operandi* in the case currently before the court.

- (c) This evidence may possibly be allowed as similar fact evidence.
- (d) This evidence is related to collateral facts and therefore inadmissible.

(1) Only statements (a) and (c) are correct.

- (2) Only statements (a) and (d) are correct.
- (3) Only statement (c) is correct.
- (4) Only statement (a) is correct.
- (5) Only statements (b) and (d) are correct.

Question 5 2010 1st – A1 q4

Jack is accused of raping a fellow student. During cross-examination of the victim it is put to her that she is lying about the identity of the accused. In an attempt to establish the victim's credibility, the prosecutor calls her roommate to testify that the complainant told her a similar story. The roommate's evidence will be

- (a) hearsay
- (b) evidence about a previous consistent statement
- (c) similar fact evidence
- (d) character evidence

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

- (3) Only statement (c) is correct.
- (4) Only statement (d) is correct.
- (5) None of the statements is correct.

Question 6

- (a) If the measures that our courts have developed to ensure the accuracy of identification parades have not been complied with, evidence of an identification during such a parade will necessarily be inadmissible. 2008 1st – A1 q4(b)
- (b) A previous consistent statement is normally made by an accused during police custody. 2010 1st – A1 q5(a)
- (c) A previous consistent statement is normally made by an accused during his or her testimony in court. SG pg40
- (d) There is question of a previous consistent statement when, during testimony in court, a witness repeats a statement consistent with one made on a previous occasion, in order to corroborate his evidence. 2010 2nd – A1 q6(c)

(1) Only statements (a) and (d) are correct.

(2) Only statement (a) is correct.

(3) Only statement (d) is correct.

- (4) Only statements (c) and (d) are correct.
- (5) Only statements (b) and (c) are correct.

Question 7 2010 2nd – A1 q7; 2009 1st – A2 q5

In the course of a civil matter the plaintiff wants to present the record of a witness' evidence in a criminal trial, based on the same facts, as evidence against the defendant. Consider the following statements:

- (a) The evidence will be hearsay evidence.
- (b) The evidence will be opinion evidence.

Later in the same civil matter the plaintiff wants to furnish the record of the court's finding in the previous criminal matter as evidence in the civil matter.

- (c) The evidence is admissible hearsay.
- (d) The evidence is admissible opinion evidence.

- (1) Only statement (a) is correct.**
 (2) Only statement (b) is correct.
 (3) Only statement (c) is correct.
 (4) Only statements (a) and (d) are correct.
 (5) None of the statements are correct.

Question 8

- (a) A third party's statement which is presented as an admission in a civil case, must be treated as hearsay evidence. **2009 2nd – A1 q5(d)**
 (b) Hearsay evidence consists of oral evidence about that which a witness previously heard and wants to testify about in court. Hearsay can therefore never be in a written form. **2010 1st – A1 q7(a)**
 (c) If all the parties to an issue agree to the admission of hearsay evidence, that evidence will no longer be hearsay and consequently becomes admissible. **2009 2nd – A1 q5(a)**
 (d) Although a court has a discretion to allow hearsay evidence, this discretion will more readily be exercised in criminal than in civil matters. **2009 1st – A1 q3(d)**

- (1) Only statement (a) is correct.**
 (2) Only statement (b) is correct.
 (3) Only statements (a) and (c) are correct.
 (4) Only statement (d) is correct.
 (5) All the statements are correct.

Question 9 **2010 1st – A1 q8**

- (a) A subjective test is used to determine whether a statement is an admission and an objective test is used in order to determine whether such a statement was voluntarily done.
 (b) A confession can only be used as evidence in court if it was also reduced to writing at the time it was made.
 (c) Since an admission amounts to a statement adverse to the person making it, no person can ever make an "admission" which will be held against another person.
 (d) If an accused gives evidence about a statement which is to his disadvantage and which forms part of an inadmissible confession, the otherwise inadmissible confession might become admissible.

- (1) Only statement (a) is correct.
 (2) Only statements (a) and (b) are correct.
 (3) Only statements (a), (b) and (c) are correct.
 (4) Only statements (c) and (d) are correct.
(5) None of the statements is correct.

Question 10

- (a) A statement made to a friend (who is not also a peace officer), will in principle be a confession if the statement was freely and voluntarily made, while the declarant was in his sound and sober senses and without being unduly influenced thereto. **2009 2nd – A1 q8(a)**
 (b) The accused points out the weapon that he used to kill his wife with. His act of pointing out can be described as a formal admission. **2009 2nd – A1 q7(a)**
 (c) Legal professional privilege falls away if a statement can prove the innocence of an accused. **2008 1st – A1 q9(c)**
 (d) Marital privilege belongs to the party who made a specific communication. **SG pg100**

- (1) Only statements (a) and (b) are correct.
 (2) Only statement (b) is correct.
 (3) Only statements (b) and (c) are correct.
 (4) Only statement (d) is correct.
(5) None of the statements is correct.

2010 First Semester – Assignment 1

Question 1

- (a) Criminal law and criminal procedural law forms part of the substantive law, whereas the law of evidence forms part of the formal law.

- (b) Substantive law states which facts have to be proved in a particular case.
 - (c) Roman-Dutch law is the common law of South Africa and therefore constitutes the historical source of our formal law.
 - (d) In the case of a residuary clause, our courts have to determine what the English law was immediately before South Africa became a republic in 1961.
- (1) Only statements (a) and (d) are correct.
 - (2) Only statements (b) and (d) are correct.**
 - (3) Only statements (a), (c) and (d) are correct.
 - (4) Only statement (c) is correct.
 - (5) All the statements are correct.

Question 2

- (a) During a trial, the court first has to consider the competency of a witness, then the admissibility of evidence, and finally the weight or persuasive value of evidence. The “weight” of evidence therefore plays no part when the court considers the admissibility of that evidence.
 - (b) A finding by a court that a particular piece of evidence is inadmissible due to irrelevance is final and cannot be reconsidered during the course of the same trial.
 - (c) The accused is charged with dealing in dagga. The fact that the accused has previously been convicted of dealing in dagga is hearsay evidence.
 - (d) Section 197 of the Criminal Procedure Act 51 of 1977 protects an accused against answering certain questions during cross-examination, but this protection falls away where the accused gives evidence against any other person charged with the same offence or an offence in respect of the same facts.
- (1) None of the statements is correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statement (d) is correct.**
 - (5) Only statements (b) and (d) are correct.

Question 3

- (a) When evidence about someone’s character is important for purposes of the law of evidence, the common law states that only evidence of the true nature of such a person may be presented.
 - (b) The accused may be cross-examined about his previous convictions if the purpose thereof is to show that he is guilty of the offence with which he is being charged.
 - (c) An accused may always present evidence of his good character and the court will normally allow it, even if the evidence has a low probative value.
 - (d) If a person does not testify, evidence that he identified someone will in principle be inadmissible hearsay evidence.
- (1) All the statements are correct.
 - (2) Only statements (b), (c) and (d) are correct.**
 - (3) Only statements (a) and (d) are correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statement (d) is correct.

Question 4

Mr C testifies in court about the theft of his car. During cross-examination the defence alleges that he is lying. The prosecutor accordingly calls Mr W to come and testify that Mr C had earlier told him the same thing. Mr W’s evidence is:

- (a) hearsay evidence.
 - (b) evidence about a previous consistent statement.
 - (c) admissible if it is presented to corroborate Mr C’s evidence.
 - (d) admissible if it is presented to strengthen Mr C’s credibility.
- (1) Only statement (a) is correct.
 - (2) Only statements (b) and (d) are correct.**
 - (3) Only statements (b) and (c) are correct.

- (4) Only statements (a) and (d) are correct.
- (5) Only statement (b) is correct.

Question 5

- (a) A previous consistent statement is normally made by an accused during police custody.
 - (b) There is question of a previous consistent statement when a witness repeats a consistent statement made by another witness on a previous occasion, which serves as self-corroboration for the other witness.
 - (c) In *S v Bergh* 1976 (4) SA 857 (A) it was decided to admit testimony about a previous consistent statement, because it increased the accuracy of the testimony by a witness.
 - (d) Evidence of a complaint in a sexual case is exceptionally admitted as a matter going towards the complainant's credibility and is therefore corroborative evidence.
- (1) All the statements are correct.
 - (2) Only statement (b) is correct.**
 - (3) Only statements (a) and (c) are correct.
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statements (a), (c) and (d) are correct.

Question 6

- (a) When an expert refers to textbooks while testifying in court, he must not merely convey the author's opinion to the court, since that will constitute evidence of previous consistent statements.
 - (b) Because of the nature of civil proceedings, parties must give notice of their intention to rely on expert evidence.
 - (c) A lay person may express an opinion on whether the driver of a motor vehicle was under the influence of alcohol.
 - (d) If the court classifies certain evidence as hearsay, such evidence will no longer be hearsay if the person upon who's credibility the probative value of the evidence depends testifies in the course of the proceedings.
- (1) Only statements (a), (b) and (c) are correct.
 - (2) Only statements (b) and (c) are correct.**
 - (3) Only statement (b) is correct.
 - (4) Only statement (d) is correct.
 - (5) Only statements (c) and (d) are correct.

Question 7

- (a) Hearsay evidence consists of oral evidence about that which a witness previously heard and wants to testify about in court. Hearsay can therefore never be in a written form.
 - (b) The court's approach in *McDonald's Corp v Joburgers Drive-Inn Restaurant* 1997 (1) SA 1 (A) provides a good example of how the common law hearsay-exceptions should today be handled.
 - (c) Formal admissions are so called because a magistrate has to formally confirm and reduce them to writing before the trial commences.
 - (d) A statement that was made without prejudice and in good faith can be disclosed if it constitutes an act of insolvency.
- (1) None of the statements is correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statement (d) is correct.**
 - (5) Only statement (b) is correct.

Question 8

- (a) A subjective test is used to determine whether a statement is an admission and an objective test is used in order to determine whether such a statement was voluntarily done.
- (b) A confession can only be used as evidence in court if it was also reduced to writing at the time it was made.
- (c) Since an admission amounts to a statement adverse to the person making it, no person can ever make an "admission" which will be held against another person.

- (d) If an accused gives evidence about a statement which is to his disadvantage and which forms part of an inadmissible confession, the otherwise inadmissible confession might become admissible.

(1) None of the statements is correct.

- (2) Only statement (a) is correct.
 (3) Only statements (a) and (b) are correct.
 (4) Only statements (a), (b) and (c) are correct.
 (5) Only statement (d) is correct.

Question 9

- (a) If you make a confession to a friend (who is not also a peace officer), evidence about that confession will be inadmissible, unless your friend is also a justice of the peace.
 (b) In order to be admissible, a confession made to a traffic officer must be confirmed and reduced to writing in the presence of a magistrate or justice of the peace.
 (c) The accused points out the weapon that he used to kill his wife with. His act of pointing out can be described as a confession.
 (d) The accused in a murder trial is forced to point out the whereabouts of the murder weapon. The murder weapon can be described as "derivative evidence".

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

Question 10

Sipho and his wife Eunice had been having a difficult time with their marriage for some time. One evening, while Sipho was allegedly working late, Eunice was stabbed to death. After a long investigation, the police arrested and charged Sipho with the murder of Eunice. At the trial, Sipho's attorney attempts to have Innocent, Sipho's neighbour, testify that his wife, Joyce, had told him (Innocent), that she was having an affair with Sipho, and that she had murdered Eunice out of jealousy and a "passionate desire" to be with Sipho. Innocent is ready and willing to testify. Although aware of the trial, Joyce decides to stay at home. The prosecution objects to the admissibility of Innocent's evidence. Consider the following statements:

- (a) The prosecution will be successful with their objection, since Joyce's statement is privileged information.
 (b) Innocent's testimony about Joyce's statement will be inadmissible hearsay evidence.
 (c) Joyce's statement is inadmissible, because it was not confirmed and reduced to writing in the presence of a magistrate or a justice of the peace.
 (d) Joyce's statement, which was done freely and voluntarily and while she was in her sound and sober senses and without undue influence, is admissible evidence of a confession.

- (1) Only statement (a) is correct.
 (2) Only statement (b) is correct.
 (3) Only statement (c) is correct.
(4) Only statement (d) is correct.
 (5) None of the statements is correct.

2009 October / November Examination

In its entirety the same as assignment 1, semester 2 of 2010

2009 Second Semester – Assignment 2

Question 1

Sipho and his wife Eunice had been having a difficult time with their marriage for some time. One evening, while Sipho was allegedly working late, Eunice was stabbed to death. After a long investigation, the police arrested and charged Sipho with killing Eunice. At the trial, Sipho's attorney attempted to have

Innocent, Siphos neighbour, testify that his wife, Joyce, had told him (Innocent), that she was having an affair with Siphos, and that she had murdered Eunice out of jealousy and a "passionate desire" to be with Siphos. Innocent is ready and willing to testify. Although aware of the trial, Joyce had decided to stay at home. The prosecution objects to the admissibility of Innocent's evidence. Consider the following statements:

- (a) The prosecution will be successful with their objection, since Joyce's statement is privileged information.
 - (b) Innocent's testimony about Joyce's statement will be inadmissible hearsay evidence.
 - (c) Joyce's statement is inadmissible, because it was not confirmed and reduced to writing in the presence of a magistrate or a justice of the peace.
 - (d) Joyce's statement, which was done freely and voluntarily and while she was in her sound and sober senses and without undue influence, will be admissible as a confession.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statement (d) is correct.**

Question 2

- (a) A confession made to a nature conservation officer must be confirmed and reduced to writing in the presence of a magistrate or a justice of the peace in order to be admissible.
 - (b) The accused points out the weapon that he used to kill his wife with. His act of pointing out can be described as an informal admission.
 - (c) The accused is forced to point out the weapon that he used to kill his wife with. The gun, which has the accused's fingerprints on it, will be admissible in terms of section 218(1) of the Criminal Procedure Act.
 - (d) An objective test is used to determine whether a statement is a confession and a subjective test is used in order to determine whether such statement was voluntarily made.
- (1) All the statements are correct.**
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statement (a) is correct.
 - (5) Only statement (d) is correct.

Question 3

Formal and informal admissions are different in that

- (a) formal admissions place the fact admitted beyond dispute, but informal admissions do not.
 - (b) formal admissions have to be made during some formal proceeding, but informal admissions can only be made during the trial.
 - (c) someone needs to testify about an informal admission, but no oral evidence is needed for a formal admission to become part of the evidence.
 - (d) formal admissions can only be made by the legal representative of the accused, whereas an informal admission can be made by anyone.
- (1) Only statements (a) and (c) are correct.**
 - (2) Only statements (b) and (d) are correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (a) and (d) are correct.
 - (5) All the statements are correct.

Question 4

A home-owner shoots and kills a burglar in his house and is subsequently charged with murder. During the trial, an inspector in the South African Police Service testifies that the accused stated to him: "Yes, I did kill him, but it appeared as if he had a firearm in his hand."

- (a) The inspector is testifying about an admission made by the accused.
- (b) The inspector is testifying about a confession made by the accused.

- (c) The inspector is testifying about a previous consistent statement.
- (d) The inspector cannot testify about the statement because it was not confirmed and reduced to writing in front of a magistrate or justice of the peace.

- (1) Only statement (a) is correct.**
- (2) Only statement (b) is correct.
- (3) Only statements (b) and (d) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (a) and (d) are correct.

Question 5

- (a) The fact that alternative and lawful means or methods of securing evidence were available at the time unconstitutionally obtained evidence was secured, will necessarily result in the exclusion of such evidence.
- (b) The accused in a murder trial is forced to point out the whereabouts of the murder weapon. The murder weapon can be described as “derivative evidence”.
- (c) In *S v Mphala* 1998 (1) SACR 388 (W) the court excluded the unconstitutionally obtained evidence because its admission would have been detrimental to the administration of justice.
- (d) In *S v Pillay* 2004 (2) SACR 419 (SCA) the Supreme Court of Appeal was not prepared to allow a statement by the accused which lead to the discovery of stolen money, but allowed evidence of the whereabouts of the stolen money.

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

2009 Second Semester – Assignment 1

Question 1

- (a) Substantive law states which facts have to be proved in a particular case.
- (b) Collateral facts are facts which are not relevant to the facts in issue, but to side issues only – its relevance will often be doubtful.
- (c) An admission of a fact in issue has, in appropriate circumstances, the same effect as a presumption.
- (d) A court might allow the opinion of a lay person on the approximate speed at which a vehicle was travelling.

- (1) All the statements are correct.**
- (2) Only statements (a), (b) and (c) are correct.
- (3) Only statements (b) and (c) are correct.
- (4) Only statements (a) and (c) are correct.
- (5) Only statement (b) is correct.

Question 2

- (a) The accused, in trying to dispute the admissibility of a confession made while he was in detention, wants to tender evidence that, on other occasions, the police have used improper means to get statements from him. Such evidence will be similar fact evidence.
- (b) Similar fact evidence can only be used by the prosecution. The law prohibits the accused from doing that.
- (c) A person is charged with fraud in that he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is similar fact evidence.
- (d) When an expert refers to textbooks while testifying in court, he must not merely convey the textbook’s opinion to the court, since that will constitute hearsay evidence.

- (1) All the statements are correct.
- (2) Only statements (a), (c) and (d) are correct.**
- (3) Only statements (b), (c) and (d) are correct.

- (4) Only statements (a) and (d) are correct.
- (5) Only statement (a) is correct.

Question 3

The evidential or probative value of a particular piece of evidence is important

- (a) only with regard to the admissibility of that evidence.
 - (b) only during the evaluation of that evidence.
 - (c) both during the evaluation of that evidence and when determining its admissibility.
 - (d) when that evidence is similar fact evidence.
 - (e) when that evidence is evidence about a previous consistent statement.
- (1) Only statement (a) is correct.
 - (2) Only statements (a) and (d) are correct.
 - (3) Only statements (c) and (d) are correct.**
 - (4) Only statements (b) and (d) are correct.
 - (5) Only statements (c), (d) and (e) are correct.

Question 4

- (a) Section 197(d) of the Criminal Procedure Act 51 of 1977 allows the presentation of evidence of an accused's previous conviction for possession of dagga if this evidence goes to counter a defence by the accused that he does not know dagga.
 - (b) Evidence about the character of the plaintiff and the defendant in a civil matter is never relevant and therefore inadmissible.
 - (c) A previous consistent statement is usually made by an accused during police custody.
 - (d) Because of the complicated nature of civil proceedings, parties must give notice of any intention to rely on expert evidence. This rule does not apply to criminal proceedings.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (a), (b) and (d) are correct.
 - (3) Only statements (b) and (c) are correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) None of the statements are correct.**

Question 5

- (a) If all the parties to an issue agree to the admission of hearsay evidence, that evidence will no longer be hearsay and consequently becomes admissible.
 - (b) If a witness in a civil case tells the court that something was admitted by another person, such evidence will constitute hearsay.
 - (c) If a witness in a criminal case tells the court that something was admitted or confessed by another person, evidence about such statements is strictly speaking hearsay evidence.
 - (d) A third party's statement which is presented as an admission in a civil case, is hearsay.
- (1) All the statements are correct.
 - (2) Only statements (b), (c) and (d) are correct.**
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statements (a) and (d) are correct.
 - (5) Only statements (b) and (d) are correct.

Question 6

- (a) Formal admissions in criminal matters are so called because they have to be formally confirmed and put to writing by a magistrate before the accused appears in court.
- (b) A confession which was voluntarily made, but which is inadmissible because some other requirement for admissibility was not complied with, may still be admissible if it is relevant and contains an admission.
- (c) Since an admission amounts to a statement adverse to the person making it, no person can ever make an "admission" which will be held against another person.
- (d) A confession made to a messenger of the court must be confirmed and reduced to writing in the presence of a magistrate or a justice of the peace in order to be admissible.

- (1) All the statements are correct.
- (2) Only statements (b), (c) and (d) are correct.
- (3) Only statements (c) and (d) are correct.
- (4) Only statements (a) and (c) are correct.
- (5) Only statement (d) is correct.**

Question 7

- (a) The accused points out the weapon that he used to kill his wife with. His act of pointing out can be described as a formal admission.
 - (b) A statement made without prejudice and in good faith, will be disclosed if it constitutes an act of insolvency.
 - (c) Evidence furnished during a trial-within-a-trial will only be admissible in the main trial if it directly relates to the facts in issue in the main trial.
 - (d) If an accused gives evidence about a statement which is to his disadvantage and which forms part of an inadmissible confession, the otherwise inadmissible confession might become admissible.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (c) and (d) are correct.
 - (3) Only statement (b) is correct.**
 - (4) Only statements (a) and (d) are correct.
 - (5) None of the statements are correct.

Question 8

- (a) A statement made to a friend will in principle be a confession if the statement was freely and voluntarily made, while the declarant was in his sound and sober senses and without being unduly influenced thereto.
 - (b) Magistrates have a privilege not to have to testify about any proceedings which took place before them.
 - (c) A third party who overhears a communication between an attorney and his client can be prevented from testifying about it.
 - (d) Informer's privilege protects the name of the informer and the content of his communication.
- (1) All the statements are correct.
 - (2) Only statements (a), (b) and (c) are correct.
 - (3) Only statements (a) and (d) are correct.
 - (4) Only statement (d) is correct.**
 - (5) Only statements (a) and (c) are correct.

Question 9

- (a) The fact that alternative and lawful means or method of securing specific evidence were available at the time unconstitutionally obtained evidence was secured, will necessarily lead to the exclusion of such evidence.
 - (b) If the admission of unconstitutionally obtained evidence will lead to an unfair trial or otherwise be detrimental to the administration of justice, the court has no discretion to allow such evidence to be used.
 - (c) Although a court has a discretion to allow hearsay evidence, this discretion will more readily be exercised in civil than in criminal matters.
 - (d) Evidence of a complaint in a sexual case is exceptionally admitted as a matter going to the complainant's credibility and is therefore corroborative evidence.
- (1) All the statements are correct.
 - (2) Only statements (a) and (c) are correct.
 - (3) Only statements (b) and (c) are correct.**
 - (4) Only statements (b), (c) and (d) are correct.
 - (5) Only statement (c) is correct.

Question 10

In the course of presenting the state's case on a charge of escaping from prison, the prosecution wants to present evidence about the accused's previous convictions.

- (a) The evidence is admissible in terms of section 211 of the Criminal Procedure Act 51 of 1977.
- (b) The evidence is expert evidence and inadmissible.

During the same case the prosecution also wants to present evidence regarding a previous conviction for escaping from prison, during which the accused followed the same *modus operandi* in the case currently before the court.

- (c) This evidence may possibly be allowed as similar fact evidence.
- (d) This evidence is related to collateral facts and therefore inadmissible.

- (1) **Only statements (a) and (c) are correct.**
- (2) Only statements (a) and (d) are correct.
- (3) Only statement (c) is correct.
- (4) Only statement (a) is correct.
- (5) Only statements (b) and (d) are correct.

2009 May / June Examination

In its entirety the same as assignment 1, semester 1 of 2010

2009 First semester – Assignment 2**Question 1**

- (a) When an expert refers to textbooks while testifying in court, he must not merely convey the textbook's opinion to the court, since that will constitute evidence of previous consistent statements.
- (b) When the admissibility of opinion evidence is considered, the same basic principles apply to both expert and lay witnesses.
- (c) A lay person can express an opinion on whether the driver of a motor vehicle was under the influence of alcohol.
- (d) Evidence heard during a trial-within-a-trial may be taken into account by a court when judging the evidence at the end of the main trial.

- (1) Only statements (a) and (b) are correct.
- (2) **Only statements (b) and (c) are correct.**
- (3) Only statements (c) and (d) are correct.
- (4) Only statement (b) is correct.
- (5) Only statement (c) is correct.

Question 2

Lucky is on trial for the murder of his wife. The prosecution claims that Lucky committed the murder by poisoning his wife with arsenic. Lucky's defence is that his wife committed suicide. Innocent, an attorney, is called by the prosecution to testify that the accused approached him in his professional capacity for legal advice and, during their discussions, admitted to having killed his wife. Innocent subsequently declined to represent Lucky. Innocent's testimony

- (a) will be admissible because he decided not to represent Lucky.
- (b) will be admissible, because Lucky had told him of a crime that had already been completed.
- (c) will be inadmissible because the communication was privileged.
- (d) will be inadmissible because it is hearsay evidence.

- (1) Only statements (a) and (b) are correct.
- (2) **Only statement (c) is correct.**
- (3) Only statements (c) and (d) are correct.
- (4) Only statement (b) is correct.
- (5) Only statement (a) is correct.

Question 3

- (a) If someone is not advised of his right against self-incrimination during bail proceedings, and evidence was obtained because of this violation of the Constitution, such evidence will generally be excluded in terms of section 35(5) of the Constitution.
 - (b) A confession that was voluntarily made, but which is inadmissible because some other requirement for admissibility was not complied with, may still be admissible if it is relevant and contains an admission.
 - (c) A confession can only be used as evidence if it was also done in writing.
 - (d) If the content of a statement does not expressly admit all the elements of an offence, but does so by necessary implication, the statement will amount to a confession.
- (1) All the statements are correct.
 - (2) Only statements (a), (c) and (d) are correct.
 - (3) Only statement (b) is correct.
 - (4) Only statements (a), (b) and (c) are correct.
 - (5) Only statements (a) and (d) are correct.**

Question 4

- (a) A statement that contains the words "made without prejudice" can never be disclosed.
 - (b) According to *Magmoed v Janse van Rensburg* 1993 (1) SACR 67 (A), a witness must be informed about his privilege against self-incrimination unless, based on the facts of the case, he could be expected to be aware of this privilege.
 - (c) A third party who, by chance, overhears a communication between an attorney and his client may testify about it.
 - (d) If the admission of evidence obtained in violation of the Constitution would render a trial unfair, such evidence could still be admitted in terms of the second leg of the test for the exclusion of unconstitutionally obtained evidence.
- (1) All the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (b) and (c) are correct.**
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statement (b) is correct.

Question 5

In the course of a civil matter the plaintiff wants to present the record of a witness' evidence in a criminal trial, based on the same facts, as evidence against the defendant.

- (a) The evidence will be hearsay evidence.
- (b) The evidence will be opinion evidence.

Later in the same civil matter the plaintiff wants to furnish the record of the court's finding in the previous criminal matter as evidence in the civil matter.

- (c) The evidence is admissible hearsay.
 - (d) The evidence is admissible opinion evidence.
- (1) Only statement (a) is correct.**
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statement (d) is correct.
 - (5) None of the statements are correct.

2009 First semester – Assignment 1**Question 1**

- (a) Roman-Dutch law is the common law of South Africa and thus constitutes the historical source of our formal law.

- (b) The law of evidence is that part of substantive law which regulates the proof of facts in a court of law.
 - (c) In terms of section 35(1) of the Constitution every arrested person has the right to adduce and challenge evidence.
 - (d) Facts relevant to the facts in issue may become in issue themselves. An example would be the reliability of a witness.
- (1) Only statements (a) and (d) are correct.
 - (2) Only statement (d) is correct.**
 - (3) Only statements (a), (b) and (c) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (c) and (d) are correct.

Question 2

- (a) The accused, in trying to dispute the admissibility of a confession made while he was in detention, wants to tender evidence that, on other occasions, the police have used improper means to get statements from him. This is evidence of previous consistent statements.
 - (b) A person is charged with fraud in that he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is evidence about previous consistent statements.
 - (c) A similar fact may be distinguished from a previous consistent statement in that a similar fact will seldom, if ever, take the form of a statement.
 - (d) There is question of a previous consistent statement when a witness repeats a consistent statement made by another witness on a previous occasion, which serves as self-corroboration for that other witness.
- (1) Only statements (a) and (c) are correct.
 - (2) Only statements (b) and (d) are correct.
 - (3) Only statements (c) and (d) are correct.**
 - (4) Only statement (c) is correct.
 - (5) Only statements (b), (c) and (d) are correct.

Question 3

- (a) The admissibility of evidence about the character of an accused is determined by a residuary section.
 - (b) If the accused presents evidence of his good character, the prosecution may present evidence of his bad character, but this evidence is limited to evidence of his general reputation.
 - (c) If a witness testifies that a person (who is not a witness before the court) made a statement to him, and this evidence is aimed at proving the truth of the statement, the evidence will be hearsay evidence.
 - (d) Although a court has a discretion to allow hearsay evidence, this discretion will more readily be exercised in criminal than in civil matters.
- (1) All the statements are correct.
 - (2) Only statements (a), (b) and (c) are correct.**
 - (3) Only statements (b) and (d) are correct.
 - (4) Only statement (a) is correct.
 - (5) Only statements (b) and (c) are correct.

Question 4

- (a) Because of the complicated nature of civil proceedings, parties must give notice of any intention to rely on expert evidence. This rule also applies to criminal proceedings.
 - (b) A court might allow the opinion of a lay person on the approximate speed at which a vehicle was travelling.
 - (c) A statement may be a confession, even though the declarant never meant this to be the case.
 - (d) If the content of a statement does not expressly admit all the elements of an offence, but does so by necessary implication, then the statement amounts to a confession.
- (1) All the statements are correct.**
 - (2) Only statements (b), (c) and (d) are correct.
 - (3) Only statements (a) and (d) are correct.

- (4) Only statements (b) and (d) are correct.
- (5) Only statements (a) and (c) are correct.

Question 5

- (a) Confessions do not occur in civil matters.
 - (b) An informal admission may be made during the course of a trial in the court itself.
 - (c) The accused points out the weapon that he used to kill his wife with. His act of pointing out can be described as a confession.
 - (d) In *S v Bergh* 1976 (4) SA 857 (A) it was decided that testimony concerning a previous consistent statement is admissible, because it increased the accuracy of the testimony of the witness.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.**
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statements (c) and (d) are correct.

Question 6

- (a) According to *Magmoed v Janse van Rensburg* 1993 (1) SACR 67 (A) a witness has to be informed about his privilege against self-incrimination unless, based upon the facts of that particular case, it might be expected of him to be aware of this privilege.
 - (b) A third party who, by chance, overhears a communication between an attorney and his client cannot be prevented from testifying about it.
 - (c) If an accused gives evidence about a statement which is to his advantage and which forms part of an inadmissible confession, the otherwise inadmissible confession might become admissible.
 - (d) Even if the admission of unconstitutionally obtained evidence will lead to an unfair trial or otherwise be detrimental to the administration of justice, the court still has a discretion to allow such evidence to be used.
- (1) All the statements are correct.
 - (2) Only statements (a) and (c) are correct.
 - (3) Only statements (b) and (d) are correct.
 - (4) Only statements (a), (b) and (c) are correct.**
 - (5) Only statements (b), (c) and (d) are correct.

Question 7

In the course of a civil case the plaintiff wants to tender the record of the testimony given by a witness in a criminal case, based on the same facts, as evidence against the defendant.

- (a) This evidence will be hearsay evidence.
- (b) This evidence will be opinion evidence.

Later in the same case, the plaintiff wants to tender the finding of the court in the prior criminal case as evidence.

- (c) This evidence is admissible hearsay evidence.
- (d) This evidence is admissible opinion evidence.

- (1) Only statement (a) is correct.**
- (2) Only statements (a) and (b) are correct.
- (3) Only statements (b) and (d) are correct.
- (4) Only statement (c) is correct.
- (5) None of the statements are correct.

Question 8

- (a) Conduct from which a negative inference can be drawn will constitute an admission, even if no communication has taken place.
- (b) If public policy requires that the identify of an informer be kept secret, this should be done, even where the informer himself wants to disclose his identity.
- (c) Informer's privilege protects the name of the informer, but not the content of his communication.

- (d) In a criminal case, evidence by a witness about an admission which was made by somebody else, is included under the statutory definition of hearsay evidence.
- (1) None of the statements are correct.
 (2) Only statements (a), (b) and (c) are correct.
(3) Only statement (b) is correct.
 (4) Only statements (c) and (d) are correct.
 (5) Only statement (c) is correct.

Question 9

Mr C testifies in court about the theft of his car. During cross-examination the defence alleges that he is lying. The prosecutor accordingly calls Mr W to come and testify that Mr C had earlier told him the same thing. Mr W's evidence is

- (a) hearsay evidence.
 (b) evidence about a previous consistent statement.
 (c) admissible if it is presented to corroborate Mr C's evidence.
 (d) admissible if it is presented to show Mr C's credibility.
- (1) Only statement (a) is correct.
 (2) Only statements (b) and (c) are correct.
(3) Only statements (b) and (d) are correct.
 (4) Only statements (a) and (d) are correct.
 (5) Only statements (a) and (c) are correct.

Question 10

The owner of a motor vehicle (E) shoots and kills D while he is trying to hi-jack E's car. E is hereafter charged with the murder of D. During the trial a newspaper salesperson testifies that E stated the following to him: "Yes, I did shoot him, but he tried to hi-jack my car!"

- (a) The newspaper salesperson is testifying about an admission made to him by E.
 (b) The newspaper salesperson is testifying about a confession made to him by E.
 (c) Evidence by the newspaper salesperson is inadmissible hearsay evidence.
 (d) The newspaper salesperson cannot testify about the statement, because it was not confirmed and reduced to writing in front of a magistrate.
- (1) **Only statement (a) is correct.**
 (2) Only statements (b) and (d) are correct.
 (3) Only statement (c) is correct.
 (4) Only statement (b) is correct.
 (5) Only statements (a) and (c) are correct.

2008 October / November Examination

In its entirety the same as assignment 1, semester 2 of 2009

2008 Second Semester – Assignment 1

Question 1

- (a) The law of evidence is part of substantive law because the substantive law determines which elements should be proved in court before someone will be guilty of a crime.
 (b) Roman-Dutch law is the common law of South Africa and thus constitutes the historical source of our formal law.
 (c) A residuary section is a section in foreign legislation that applies in our law.
 (d) Section 35(5) of the Constitution allows a court to admit evidence which was obtained in a manner that violates the Constitution.
- (1) Only statements (a), (b) and (d) are correct.
 (2) Only statements (a), (c) and (d) are correct.

- (3) Only statements (c) and (d) are correct.
- (4) Only statement (c) is correct.
- (5) Only statement (d) is correct.**

Question 2

- (a) The limitations clause in section 36 of the Constitution applies to situations where the exclusion of unconstitutionally obtained evidence is considered.
 - (b) Facts relevant to the facts in issue may become in issue themselves. An example would be the reliability of a witness.
 - (c) It is possible to allow evidence of an accused's previous convictions by way of the rules governing the admissibility of similar fact evidence.
 - (d) An accused may always present evidence of his good character, and the court will normally allow it, even if the evidence has a low evidential value.
- (1) All the statements are correct.
 - (2) Only statements (b), (c) and (d) are correct.**
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) Only statements (a) and (b) are correct.

Question 3

- (a) The accused, in trying to dispute the admissibility of a confession made while he was in detention, wants to tender evidence that, on other occasions, the police have used improper means to get statements from him. This is evidence of previous consistent statements.
 - (b) In the case of similar fact evidence there are two separate sets of facts. Firstly, the facts in issue before the court, and secondly, a separate set of facts which is similar to the facts in issue before the court, but which is in dispute in another court.
 - (c) A person is charged with fraud because he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is evidence about previous consistent statements.
 - (d) Section 197 of the Criminal Procedure Act 51 of 1977 protects an accused against answering certain questions, but this protection falls away when the accused is charged with the crime of receiving stolen property.
- (1) None of the statements are correct.
 - (2) Only statements (b) and (c) are correct.
 - (3) Only statements (a) and (d) are correct.
 - (4) Only statement (d) is correct.**
 - (5) Only statement (b) is correct.

Question 4

- (a) A previous consistent statement is a statement which is similar to a statement made by someone on a previous occasion in court.
 - (b) There is the possibility of a previous consistent statement when a witness repeats a consistent statement made by another witness on a previous occasion which serves as self-corroboration for that other witness.
 - (c) In the case of an alleged offence of a sexual nature, evidence of a previous consistent statement will *inter alia* be admissible if the complaint was made at the first reasonable opportunity, but not later than 48 hours after the offence was committed.
 - (d) A number of principles have over time evolved to ensure the fairness of an identification parade. One principle is that it is important that the people in the line-up do not wear similar clothes.
- (1) None of the statements are correct.
 - (2) Only statement (b) is correct.**
 - (3) Only statements (a) and (d) are correct.
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statement (d) is correct.

Question 5

- (a) It is possible for a court to allow the opinion of a lay person about the writer of a specific handwriting.
 - (b) Because of the complicated nature of civil proceedings, parties must give notice of their intention to rely on expert evidence. However, this rule does not apply to criminal proceedings.
 - (c) Hearsay evidence can never be in a written form.
 - (d) If the court classifies certain evidence as hearsay, the mere fact that the person upon whose credibility the probative value of the evidence depends later testifies in the proceedings, will cause the evidence to be admissible.
- (1) **Only statement (a) is correct.**
 (2) Only statements (a) and (b) are correct.
 (3) Only statements (c) and (d) are correct.
 (4) Only statement (d) is correct.
 (5) Only statement (b) is correct.

Question 6

- (a) A subjective test is used to determine whether a statement is an admission and an objective test is used in order to determine whether such statement was made voluntarily.
 - (b) A statement can only be a confession if it was made in writing.
 - (c) If the content of a statement does not expressly admit all the elements of an offence but does so by necessary implication, then the statement amounts to a confession.
 - (d) A formal admission makes further evidence on the fact or facts admitted unnecessary, because it places such fact or facts beyond dispute.
- (1) Only statement (d) is correct.
 (2) Only statements (a) and (b) are correct.
 (3) **Only statements (c) and (d) are correct.**
 (4) Only statements (b) and (d) are correct.
 (5) Only statement (a) is correct.

Question 7

- (a) If you make a confession to a friend, evidence about that confession will be inadmissible, unless your friend is also a justice of the peace.
 - (b) In terms of section 217(1) of the Criminal Procedure Act 51 of 1977 a confession to a member of the public is admissible if it was made freely and voluntarily by a person in his sound and sober senses and without having been unduly influenced thereto.
 - (c) In order to be admissible, a confession made to a traffic officer must be confirmed and reduced to writing in the presence of a magistrate or justice of the peace.
 - (d) Evidence about an involuntary pointing out will be inadmissible, even if a relevant fact is discovered as a result of such a pointing out.
- (1) All the statements are correct.
 (2) **Only statements (b) and (c) are correct.**
 (3) Only statements (a) and (d) are correct.
 (4) Only statement (c) is correct.
 (5) Only statements (b), (c) and (d) are correct.

Question 8

- (a) A witness may refuse to enter the witness box and testify on strength of the fact that what he is about to say will be protected by privilege.
 - (b) A witness in criminal proceedings may refuse to answer any question because the answer may bring about civil liability on his part.
 - (c) According to *S v Dlamini* 1999 (2) SACR 51 (CC) any evidence given by an accused during a bail hearing can never be used against him in the main trial.
 - (d) Because of the constitutional right to privacy, a third party that overhears a conversation between two spouses may not testify about it in a subsequent court case.
- (1) **None of the statements are correct.**
 (2) Only statements (a) and (b) are correct.

- (3) Only statements (a) and (d) are correct.
- (4) Only statement (d) is correct.
- (5) Only statements (b) and (c) are correct.

Question 9

- (a) During a domestic violence dispute, a husband pointed a gun at his wife and spoke of his intention to kill her and the children. The wife can be compelled to testify about the pointing of the gun, but could refuse to testify about what the husband said to her during the dispute.
 - (b) If a suspect makes an admission to the investigating officer before the investigating officer has the opportunity to warn the suspect of his constitutional rights, that admission will simply be inadmissible.
 - (c) Even if the admission of unconstitutionally obtained evidence will lead to an unfair trial or otherwise be detrimental to the administration of justice, the court still has a discretion to allow such evidence to be used.
 - (d) Incriminating non-communicative real evidence unconstitutionally obtained from the body of a suspect in principle does not affect the privilege against self-incrimination.
- (1) All the statements are correct.
 - (2) Only statements (a) and (d) are correct.**
 - (3) Only statements (a) and (c) are correct.
 - (4) Only statements (b) and (d) are correct.
 - (5) Only statement (b) is correct.

Question 10

The investigating officer takes A, the accused in a murder case, to a place in the wood where A points out a pistol. "This is the pistol", he declares. Ballistic tests prove that this pistol was used to kill the deceased. A's behaviour (not his statement) is

- (a) a formal admission.
 - (b) an informal admission.
 - (c) an informal admission by conduct.
 - (d) a confession.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.**
 - (4) Only statement (d) is correct.
 - (5) None of the statements are correct.

2008 First Semester – Assignment 1

Question 1

- (a) The "facts in dispute" in a particular case are strongly influenced by the applicable substantive law.
 - (b) Criminal law and criminal procedural law form part of the substantive law, whereas the law of evidence forms part of the adjective law.
 - (c) The procedural law of South Africa is mostly drawn from principles of the Roman-Dutch law.
 - (d) A residuary section is a section in a piece of South African legislation.
- (1) Only statement (a) is correct.
 - (2) Only statements (a) and (d) are correct.**
 - (3) Only statements (b) and (c) are correct.
 - (4) Only statement (d) is correct.
 - (5) Only statements (a), (b) and (c) are correct.

Question 2

- (a) Section 206 of the Criminal Procedure Act 51 of 1977 is a residuary section because it provides that the law governing the competency, compellability, or privilege of witnesses, which was in force in respect of criminal proceedings on the 30th day of May 1961, shall apply in any case not expressly provided for.

- (b) During a trial the court first has to consider the competence of a witness, then the admissibility of evidence, and finally the weight or persuasive value of the evidence. The “weight” of evidence therefore plays no role when the court considers the admissibility of such evidence.
- (c) Irrelevant evidence will never be admissible, but relevant evidence will always be admissible.
- (d) A finding by a court that a particular piece of evidence is inadmissible due to irrelevance is final and cannot be reconsidered during the course of the same trial.

- (1) Only statement (a) is correct.**
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (c) are correct.
- (4) Only statements (c) and (d) are correct.
- (5) Only statements (b) and (d) are correct.

Question 3

- (a) Similar fact evidence can only be used by the state, since the law prohibits the accused from doing that.
 - (b) In *R v Davies* 1925 AD 30 it was found that evidence of the fact that the accused had indecent photographs in his possession was admissible on a charge that he had committed indecent acts with another man, since it established that the accused had a sexually deviant character.
 - (c) Section 197 of the Criminal Procedure Act 51 of 1977 protects an accused against answering certain questions, but this protection falls away where the accused gives evidence against any other person charged with the same offence or an offence in respect of the same facts.
 - (d) When evidence about someone’s character is important for purposes of the law of evidence, the common law states that only evidence of the true nature of such a person may be led.
- (1) Only statements (a) and (d) are correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.**
 - (4) Only statement (a) is correct.
 - (5) None of the statements are correct.

Question 4

- (a) In *S v Moti* 1998 (2) SACR 245 (SCA) the court found evidence of a photo-identification to be admissible as an exception to the rule against the admissibility of similar fact evidence.
 - (b) If the measures which our courts have developed to ensure the accuracy of identification parades have not been complied with, evidence of an identification during such a parade will necessarily be inadmissible.
 - (c) In the case of an alleged offence of a sexual nature, evidence of a previous consistent statement will *inter alia* be admissible if the complaint was made at the first reasonable opportunity, but not later than 24 hours after the offence was committed.
 - (d) There is the possibility of a previous consistent statement when, during testimony in court, a witness repeats a statement consistent with one made on a previous occasion, in order to corroborate his evidence.
- (1) None of the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (b) is correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) Only statement (d) is correct.**

Question 5

- (a) The court in *Hollington v Hewthorn* [1943] 2 All ER 35 decided that the finding on an issue in a civil trial cannot serve as proof of that issue in an ensuing criminal trial, since the onus of proof in criminal matters is higher than in civil matters.
- (b) When an expert conveys the opinion of the author of a specific textbook to the court, such evidence is in actual fact hearsay evidence.
- (c) A lay person may express an opinion on whether the driver of a motor vehicle was under the influence of alcohol.
- (d) If all the parties to an issue agree to the admission of hearsay evidence, that evidence will no longer be hearsay, and consequently becomes admissible.

- (1) Only statements (a) and (d) are correct.
- (2) Only statements (b) and (c) are correct.**
- (3) Only statements (a) and (b) are correct.
- (4) All the statements are correct.
- (5) Only statement (d) is correct.

Question 6

- (a) Although the court has a discretion to allow hearsay evidence, this discretion will more readily be exercised in criminal than in civil matters.
 - (b) Since an admission amounts to a statement adverse to the person making it, no person can ever make an "admission" which will be held against another person.
 - (c) A confession that is inadmissible because some requirement for admissibility was not complied with, may still be admissible if it is relevant and contains an admission.
 - (d) According to *S v Grove-Mitchell* 1975 (3) SA 417 (A) the following statement is a confession: "I shot her full of holes, I emptied the gun on her".
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (c) and (d) are correct.
 - (3) Only statement (b) is correct.
 - (4) Only statement (d) is correct.
 - (5) None of the statements are correct.**

Question 7

- (a) A statement may be a confession, even though the declarant did not intend it to be.
 - (b) For a confession to be admissible, it needs to be in writing.
 - (c) If a confession is made to a justice of the peace, it has to be confirmed and reduced to writing in the presence of a magistrate.
 - (d) A confession made to a messenger of the court must be confirmed and reduced to writing in the presence of a magistrate or justice of the peace in order to be admissible.
- (1) Only statements (a) and (d) are correct.**
 - (2) Only statements (b) and (c) are correct.
 - (3) Only statement (a) is correct.
 - (4) Only statement (b) is correct.
 - (5) Only statement (d) is correct.

Question 8

- (a) A constable is a peace officer, or a justice of the peace, depending on his years of commendable service in the South African Police Service.
 - (b) A confession which is inadmissible in terms of section 217(1) of the Criminal Procedure Act 51 of 1977 may, according to *S v Nieuwoudt* 1990 (4) SA 217 (A), become admissible against the accused if the accused presents evidence concerning that confession which is, in the opinion of the presiding officer, favourable to the accused.
 - (c) In terms of section 1 of the Criminal Procedure Act 51 of 1977 the term "justice" refers to "a person who is a justice of the peace under the provisions of the Justices of the Peace and Commissioners of Oaths Act, 1963". An inspector in the South African Police Service is included in this definition.
 - (d) The accused points out the weapon that he used to kill his wife. His act of pointing out can be described as a confession.
- (1) Only statements (a), (b) and (c) are correct.
 - (2) Only statement (b) is correct.**
 - (3) Only statements (c) and (d) are correct.
 - (4) Only statement (d) is correct.
 - (5) None of the statements are correct.

Question 9

- (a) The privilege against self-incrimination is available to a witness who testifies at an inquest.
- (b) If an agent or independent third party provides information to a legal advisor, that communication will be privileged, in other words, the client can prevent such a person from revealing the information.

- (c) Legal professional privilege falls away if a statement can prove the innocence of an accused.
 - (d) A spouse can claim marital privilege with regard to communications made during the course of a marriage, even if the spouses are divorced at the time when the privilege is claimed.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (a) and (d) are correct.**
 - (5) All the statements are correct.

Question 10

- (a) Magistrates have a privilege not to have to testify about any proceedings that took place before them.
 - (b) A third party that overhears a conversation between two spouses can testify about such conversation in a subsequent court case.
 - (c) The fact that an arrested person voluntarily provided evidence in the absence of constitutional warnings means that such evidence will automatically be admissible.
 - (d) Relevant evidence that was obtained in violation of the Constitution will always be inadmissible.
- (1) None of the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (b) is correct.**
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (d) are correct.

2007 Second Semester – Assignment 1

Question 1

- (a) If you make a confession to a friend, evidence about that confession will be inadmissible, unless your friend is also a justice of the peace.
 - (b) For a confession to be admissible, it needs to be in writing.
 - (c) In terms of section 217(1) of the Criminal Procedure Act 51 of 1977 a confession to a member of the public is admissible if it was made voluntarily by a person in his sound and sober senses and without having been unduly influenced thereto.
 - (d) A Confession which is inadmissible in terms of section 217(1) of the Criminal Procedure Act 51 of 1977 may, according to *S v Nieuwoudt* 1990 (4) SA 217 (A), become admissible against the accused if the accused presents evidence concerning that confession which is, in the opinion of the presiding officer, favourable to the accused.
- (1) Only statement (c) is correct.
 - (2) Only statement (d) is correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) Only statements (b) and (d) are correct.
 - (5) Only statements (c) and (d) are correct.**

Question 2

- (a) Evidence about an involuntary pointing out will be admissible if a relevant fact is discovered as a result of such a pointing out.
 - (b) The accused points out the weapon that he used to kill his wife with. His act of pointing out can be described as a confession.
 - (c) A witness may refuse to enter the witness box and testify on the basis that what he is about to say will be protected by privilege.
 - (d) According to *Magmoed v Janse van Rensburg* 1993 (1) SACR 67 (A) a witness must be informed about his privilege against self-incrimination unless, based on the facts of the case, he could be expected to be aware of this privilege.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statement (d) is correct.**

- (5) None of the statements are correct.

Question 3

- (a) A third party who, by chance, overhears a communication between an attorney and his client may testify about it.
- (b) A spouse can claim marital privilege with regard to communications made during the course of a marriage, even if the spouses are divorced at the time of claiming the privilege.
- (c) If access to a statement made by a witness may lead to the intimidation of such a witness, the state may object to that statement being made available to the accused.
- (d) Judges have a privilege not to testify about any proceedings that took place before them.
- (1) Only statements (a) and (b) are correct.
- (2) Only statements (b), (c) and (d) are correct.
- (3) Only statements (c) and (d) are correct.
- (4) Only statements (a), (b) and (c) are correct.**
- (5) All of the statements are correct.

Question 4

- a) Relevant evidence that was obtained in violation of the Constitution will always be inadmissible.
- b) The court has a discretion to exclude unconstitutionally obtained evidence if the admission of that evidence would have the effect described in section 35(5) of the Constitution.
- c) The fact that an arrested person voluntarily provided evidence in the absence of constitutional warnings, means that such evidence will automatically be admissible.
- d) Incriminating non-communicative real evidence unconstitutionally obtained from the body of a suspect does not effect the privilege against self-incrimination and will therefore never be excluded.
- 1) Only statements (a) and (b) are correct.
- 2) Only statements (b) and (c) are correct.
- 3) Only statement (c) is correct.
- 4) Only statement (d) is correct.
- 5) None of the statements are correct.**

Question 5

A homeowner shoots and kills a burglar in his house and is subsequently charged with murder. During the trial, an inspector in the South African Police Service testifies that the accused stated to him: "Yes, I did kill him, but it appeared as if he had a firearm in his hand."

- a) The inspector is testifying about an admission made by the accused.
- b) The inspector is testifying about a confession made by the accused.
- c) The inspector is testifying about a previous consistent statement.
- d) The inspector cannot testify about the statement because it was not confirmed and reduced to writing in front of a magistrate or justice of the peace.
- 1) Only statements (a) and (b) are correct.
- 2) Only statements (b) and (c) are correct.
- 3) Only statement (a) is correct.**
- 4) Only statement (d) is correct.
- 5) None of the statements are correct.

2007 May / June Examination

In its entirety the same as assignment 1, semester 2 of 2008

2007 First Semester – Assignment 1

Question 1

- (a) If the current South African law does not provide a solution to an evidentiary problem, our courts will first of all search for the answer in the early Roman-Dutch law.

- (b) Evidence is not only logically relevant when it proves something positively, but also when it proves the opposite.
 - (c) In terms of section 35(3) of the Constitution, every arrested person has the right to a fair trial.
 - (d) Relevance or irrelevance is a matter of degree.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (b) and (c) are correct.
 - (3) Only statements (a), (b) and (c) are correct.
 - (4) Only statements (b), (c) and (d) are correct.
 - (5) Only statements (b) and (d) are correct.**

Question 2

- (a) Collateral facts are facts which are not relevant to the facts in issue, but to side issues only its relevance will often be doubtful.
 - (b) In *R v Davis* 1925 AD 30 it was found that evidence of the fact that the accused had indecent photographs in his possession was admissible on a charge that he had committed indecent acts with another man, since it established that the accused had a sexually deviant character.
 - (c) The accused may be cross-examined about previous convictions if the purpose is to show that he is guilty of the offence with which he is charged.
 - (d) Evidence about the character of the plaintiff and the defendant in a civil matter is never relevant and therefore inadmissible.
- (1) Only statements (a) is correct.
 - (2) Only statements (b) and (c) are correct.
 - (3) Only statements (a), (b) and (c) are correct.
 - (4) Only statements (b), (c) and (d) are correct.
 - (5) Only statements (a) and (c) are correct.**

Question 3

- (a) A person is charged with fraud in that he made a false statement to a financial institution. Evidence that this person has, on previous occasions, made similar false statements to other financial institutions, is evidence about previous consistent statements.
 - (b) There is question of a previous consistent statement when a witness repeats a consistent statement made by another witness on a previous occasion, which serves as self-corroboration for that other witness.
 - (c) Evidence of a previous consistent statement may be offered in order to rebut an allegation of recent fabrication.
 - (d) When the admissibility of opinion evidence is considered, the same basic principle applies to both expert and lay witnesses.
- (1) Only statements (c) and (d) are correct.
 - (2) All the statements are correct.
 - (3) Only statements (a), (b) and (c) are correct.
 - (4) Only statements (b), (c) and (d) are correct.**
 - (5) Only statements (a) and (c) are correct.

Question 4

- (a) Because section 3 of the Law of Evidence Amendment Act 45 of 1988 now determines when hearsay evidence will be admissible, hearsay that would have been admissible under the common law is no longer admissible.
 - (b) Hearsay evidence always consists of oral evidence that a witness in court previously heard and want to testify about in court.
 - (c) When a court exercises its discretion and allows hearsay evidence, that evidence is no longer hearsay and becomes admissible for this reason.
 - (d) Formal admissions in civil matters can only be withdrawn with permission from the court.
- (1) Only statement (d) is correct.**
 - (2) None of the statements are correct.
 - (3) Only statements (a) and (d) are correct.
 - (4) Only statements (b) and (d) are correct.
 - (5) Only statements (c) and (d) are correct

Question 5

- (a) A statement that contains a defence can never be a confession.
 - (b) An informal admission places the fact admitted beyond dispute.
 - (c) According to *S v Grove-Mitchell* 1975 (3) SA 417 (A) the following statement is a confession: "I shot her full of holes, I emptied the gun on her."
 - (d) A statement may be a confession, even though the declarant did not intend it to be.
- (1) Only statement (d) is correct.
 - (2) Only statement (a) is correct.
 - (3) Only statements (a) and (d) are correct.**
 - (4) Only statements (b) and (d) are correct.
 - (5) Only statements (c) and (d) are correct
-