

EVI302-B (417858)
EVI102-4 (420093)

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EVIDENCE MODULE 302

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

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SECOND :

This paper consists of 8 pages plus instructions on the completion of the mark reading sheet.

IMPORTANT NOTICE

ALL THE SECTIONS ARE COMPULSORY. SECTION 1 CONSISTS OF MULTIPLE-CHOICE QUESTIONS. THESE QUESTIONS HAVE TO BE ANSWERED ON THE MARK READING SHEET, WHICH WILL BE ISSUED WITH YOUR ANSWER BOOK. YOU HAVE TO READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK READING SHEET CAREFULLY. FAILURE TO DO SO MAY RESULT IN THE COMPUTER BEING UNABLE TO MARK YOUR ANSWERS. SECTIONS 2 TO 4 ARE ALSO COMPULSORY AND YOU THEREFORE HAVE TO ANSWER EACH ONE OF THEM. NOTE THAT THERE ARE NO OPTIONAL QUESTIONS.

[TURN OVER]

SECTION 1

IMPORTANT: THIS SECTION, IN ITS ENTIRETY, HAS TO BE ANSWERED ON THE MARK READING SHEET. EACH ANSWER IS WORTH 3 MARKS.

Question 1

- (a) The cautionary rule requires a judicial official to seek a safeguard, such as corroboration or some other form, which will sufficiently dispel the suspicion and the dangers inherent in the suspect evidence.
- (b) In civil cases, the basic rule as far as onus of proof is concerned is that he who alleges must prove. This rule was initially derived from the decision in Eskom v First National Bank 1995 (2) SA 386 (A).
- (c) The identification of an accused would be improper if a photo-identification, instead of an identification parade, was held when the suspect was already in custody.
- (d) An accused may not be convicted even if an evidentiary burden rests upon her, if she chooses to exercise her constitutional right to silence and in no way contests the state's case.

Answer 1

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

Question 2

- (a) A fact will be presumed in terms of a presumption, unless the contrary is proved. In terms of S v Zuma 1995 (1) SACR 568 (CC) it was found that if the presumption is a true presumption of law, proof on a balance of probabilities has to be provided in order to upset the presumption.
- (b) S v Eadie 2002 (1) SACR 663 (SCA) interprets section 78(1B) of the Criminal Procedure Act 51 of 1977, to mean that a defence of sane automatism now imposes an evidential burden on the accused and not merely an obligation to raise a defence.
- (c) The court is bound by the opinion of a handwriting expert and may not hear lay evidence or draw its own comparisons with regard to the analysis of handwriting.
- (d) The behaviour or demeanour of a witness is irrelevant because it is unreliable, and is therefore not considered as real evidence.

Answer 2

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

[TURN OVER]

Question 3

- (a) An inspection *in loco* does not furnish real evidence of what is inspected on site.
- (b) Secondary evidence can be any kind of admissible evidence since no one form of secondary evidence is more or less secondary than any other.
- (c) The court in S v Bhulwana; S v Gwadiso 1995 (2) SACR 748 (CC) stated that an evidentiary burden simply required the accused to create a reasonable doubt; whereas the true burden of proof or reverse onus required proof on a preponderance of probabilities.
- (d) In Klaasen v Benjamin 1941 TPD 80, Schreiner JA illustrated the principle that the real onus shifts in civil cases.

Answer 3

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

Question 4

- (a) Non-compliance with the cautionary rule will generally not result in the finding of the court being set aside, as was the case in R v Mbonambi 1957 (3) SA 232 (A).
- (b) There can never be corroboration of an accomplice's testimony with evidence of another accomplice in order to satisfy the cautionary rule.
- (c) When an evidentiary burden rests upon the accused, in the final instance, the state is not required to prove the guilt of the accused beyond a reasonable doubt.
- (d) Where no corroboration of an accomplice's evidence is available, there must be some other assurance that the evidence of the accomplice is reliable. Such assurance is self-evident where the accused is a lying witness.

Answer 4

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

[TURN OVER]

Question 5

- (a) The analysis of footprint evidence has to be performed by an expert as per S v Shabalala 1986 (4) SA 734 (A).
- (b) The presentation of documentary evidence often amounts to hearsay evidence.
- (c) Judicial officers should consider probabilities in the light of proven facts in the evaluation of evidence. A court should therefore, in principle, place more weight on credible direct evidence, even though this evidence might be in conflict with probabilities arising from human experience or expert opinion.
- (d) It is easier to describe the civil standard of proof than the criminal standard of proof, since the civil standard consists of a comparative or relative standard rather than a quantitative test.

Answer 5

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

Question 6

- (a) Although the cautionary rule was primarily intended to be applied in criminal cases, it sometimes also applies in civil cases.
- (b) Corroboration of the accomplice's testimony is required, even where the accused is not implicated and the accomplice merely gives details of the crime.
- (c) The probative value of the evidence of a single witness should not be equated with that of several witnesses.
- (d) If the state adduces good *prima facie* evidence and the accused provided credible evidence in defence, the accused will be acquitted because both the evidentiary burden and the onus of proof are on the state.

Answer 6

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

Question 7

- (a) Even if a document has been authenticated, this does not mean that its contents will be admissible.
- (b) Re-examination is undertaken by the party who had called the witness and leading questions are permissible.
- (c) Questions about the accused's previous convictions or bad character may be asked in cross-examination in order to attack the credibility of the accused.
- (d) A person and even the scene of the crime itself may constitute real evidence.

Answer 7

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

Question 8

- (a) The court in civil cases may call witnesses of its own accord without the consent of the parties.
- (b) It is compulsory to use the original document, in all circumstances, before a witness will be allowed to refresh her memory while in the witness box.
- (c) A document can be authenticated by a person who can identify the handwriting or signature only if the author or signatory is not available.
- (d) The cautionary rule prescribes a specific approach to be adopted by the court to assist in the evaluation of certain evidence and is found in the Criminal Procedure Act 51 of 1977.

Answer 8

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

Question 9

A crowd of people are watching performers who are entertaining them. Suddenly, they are attacked by a group of persons who steal their wallets and jewellery. X, Y and Z, members of the audience, capture footage of the criminals on a camera (non-digital), video-camera (non-digital) and a cellular-phone respectively. The thieves are caught and charged with theft. Answer the following questions regarding the trial evidence:

- (a) The videotape footage by Y can be classified as real evidence in terms of S v Singh 1975 (1) SA 330 (N) and S v Ramgobin 1986 (4) SA 117 (N).
- (b) The videotape footage by Y can be classified as documentary evidence in terms of S v Mpumlo 1986 (3) SA 485 (E) and S v Baleka (1) 1986 (4) SA 192 (T).
- (c) The photograph taken by X is regarded as real evidence because it is used to represent something that is the subject matter of the particular court case.
- (d) The data message captured on Z's cellular phone depicting the theft is inadmissible and carries no evidential weight.

Answer 9

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

Question 10

- (a) A person who has lawful control and custody of a document may authenticate it, in the case of its being older than 20 years provided that it is produced from the control (and from the place) where one would normally expect such a document to be kept, if authentic.
- (b) Our law does not require the existence of a status or relationship created by a document to be proved with the original document.
- (c) A person who found a document in the possession or control of an opponent may authenticate such document because such a document is admissible evidence against the opponent.
- (d) It is sufficient for a judicial officer to mention the use of the cautionary rule in his judgment without showing that it has actually been applied (R v Mgwengwana 1964 (2) SA 149 (C)).

Answer 10

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

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SECTION 2

- 2.1 Under what circumstances, if any, should a child's testimony be assessed using the cautionary rule? (5)
- 2.2 Explain the evidential value of "D.N.A. fingerprinting" in establishing identity. (5)
- 2.3 Are public documents by their nature more reliable than most other documents? Discuss. (5)
- 2.4 Is the question of the incidence of onus of proof one of substantive or formal law in civil cases? (5)
[20]

SECTION 3

- 3.1 Is the evaluation of circumstantial evidence different for criminal and civil cases? Explain with reference to case authority. (10)
- 3.2 Has the general rule regarding the competence and compellability of the spouse of an accused changed from the common law position in any significant way? Explain with reference to authority. (10)
[20]

SECTION 4

X and Y are employed at a hospital. One night they are caught stealing copper pipes and electrical cables on the hospital grounds. As a result of their activities the hospital's functioning is severely impaired and disrupted, with a consequence that a patient in the intensive care unit dies. They are charged with the following crimes: murder, theft and malicious injury to property.

Answer the following:

- 4.1 Assume that you are the prosecutor in the case. You are sure that you can get a conviction on the theft and malicious injury to property charges. However, you are unsure of a conviction on the murder charge. You are hopeful of a conviction on culpable homicide, a competent verdict (where conviction on a lesser charge not stipulated in the charge sheet is allowed under certain conditions) and where negligence rather than intention of the accused is required. Are you compelled to ask the judicial officer presiding over the case to take judicial notice of the law in this matter? Explain with reference to authority. (10)
- 4.2 Assume that in the course of the investigation the police take confessions from X and Y. However, it later appears that the defence teams wish to challenge the admissibility of the confessions on the grounds that they were not made freely and voluntarily. Discuss the current position as regards any statutory provision that may be applicable, as well as the constitutional implications, with reference to authority. (10)

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- 4.3 What would the legal position be if the only evidence against X and Y are their respective confessions to the abovementioned charges. What, if any, evidential rule and legislation are applicable, that allows for a conviction on the single evidence of a confession. Explain with reference to authority.

(10)

[30]**Total: [100]**