

**EVI301A**

( 481972)

May/June 2009

**EVIDENCE: ADMISSIBILITY OF EVIDENCE**

Duration 2 Hours

100 Marks

**EXAMINERS**

FIRST

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PROF BC NAUDE

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PROF SS TERBLANCHE

SECOND

PROF DP VAN DER MERWE

This paper consists of seven (7) pages plus instructions on the completion of the mark reading sheet

**IMPORTANT NOTICE**

**ALL 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 IN THIS PAPER.**

**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) 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

**Answer 1**

- (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

**[Turn over]**

**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.

*Answer 2*

- (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.

*Answer 3*

- (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

**Answer 4**

- (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

**Answer 5**

- (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 whose credibility the probative value of the evidence depends testifies in the course of the proceedings

*Answer 6*

- (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

*Answer 7*

- (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

*Answer 8*

- (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"

*Answer 9*

- (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.

*Answer 10*

- (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

**Total marks for SECTION 1: [30]**

**SECTION 2**

- 2.1 When should a court not uphold an informer's privilege? Briefly discuss with reference to relevant case law. (5)
  - 2.2 Briefly explain what happens during a "trial-within-a-trial". (5)
  - 2.3 Give a definition of similar fact evidence. Explain how similar fact evidence might be irrelevant at one stage of the trial, yet relevant at another stage, with reference to R v Solomons 1959 (2) SA 352 (A). (5)
  - 2.4 In S v M 2003 (1) SA 341 (SCA) the court identified certain factors that our courts should consider when judging whether or not evidence about the complainant's sexual history will be admissible and relevant. Mention five of these factors. (5)
- [20]**

**[Turn over]**

**SECTION 3**

- 3.1 The rule of the law of evidence is that it is inadmissible for a witness to testify that she made a statement consistent with her evidence in court. Does this rule also apply to complaints in sexual cases? Fully discuss with reference to cases and applicable examples (10)
- 3.2 In terms of section 32 of the Constitution, every individual has a right of access to any information held by the state. Fully discuss this statement with reference to Shabalala v Attorney-General of the Transvaal 1996 (1) SA 725 (CC). In your answer, focus upon the general approach to be followed by a court regarding public policy, under a system of fundamental rights (10)
- [20]**

**SECTION 4**

The accused (A) is charged with the rape of a niece (C). C testified at the trial as to what had happened to her during the rape, and the prosecution led supporting evidence in the form of an agreement reached between A and the family of C. This agreement was mediated by S, an upstanding member of the local community. A did not admit verbally to having raped C, but he did sign the agreement, in terms of which he had to pay a fine of 17 cattle to C. The agreement's heading read "On the matter of the rape of [C] by [A]". At the trial, S testified about the signing of the agreement and the facts occurring at the time. Answer the following questions, with reference to authority, where applicable.

- 4.1 What is the nature of S's evidence that C signed the agreement mentioned above? Explain the answer and explain the effect of the fact that A did not say anything when signing the agreement (10)
- 4.2 Fully discuss, with reference to authority, the requirements for the admissibility of S's evidence (8)
- 4.3 Assume that A, instead of keeping quiet, stated during the signing of the agreement that "Yes, I should not have done this to C." Fully discuss, with reference to S v Yende 1987 (3) SA 367 (A), how it should be determined what the nature of A's statement is in such an instance. Give full definitions to explain your answer and briefly refer to requirements for admissibility (12)
- [30]**

**TOTAL: [100]**