

UNISA
UNIVERSITY OF SOUTH AFRICA

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410772

EVI102-4 (410772)

May/June 2004

EVIDENCE MODULE 102

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

MS K MOODLEY

SECOND :

PROF SS TERBLANCHE

This paper consists of 8 pages plus instructions for the completion of a 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. SECTION 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]

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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) In criminal cases, where the onus of proof rests on the defence, the courts require proof upon a preponderance of probabilities.
- ✓(b) In *Eskom v First National Bank of Southern Africa Ltd* 1995 (2) SA 386 (A) the Appellate Division confirmed that the incidence of the onus of proof is a matter of substantive law.
- ✓(c) No formal requirements exist for the handing in of real evidence such as weapons or prohibited substances.
- (d) Examples of documentary evidence include the following: photographs, wills, books and drawings.

book map plan drawing photographs

Answer 1

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

Question 2

- ✓(a) An accused is a competent witness in her own defence and can be compelled to testify by a co-accused.
- ✓(b) A document was defined in *Secombe v Attorney General* 1919 TPD 270 as "everything that contains the written or pictorial proof of something".
- ✓(c) A number of true statements may, while not in themselves conclusive of the accused's guilt, mutually strengthen one another, and result in an accused being convicted upon circumstantial evidence.

Answer 2

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

[TURN OVER]

Question 3

- (a) ✓ When the subject matter of a cinematographic film is at issue, it should be treated as documentary evidence.
- (b) ✗ Leading questions may be asked during examination-in-chief if such questions are necessary to expedite the proceedings.
- (c) ✗ If a witness is re-examined on a new matter, the opposing party will have the right to cross-examine the witness on such new matter.
- (d) There is no process of discovery in criminal cases, although the state may be requested in writing to provide further particulars to the charge.

Answer 3

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

Question 4

- ~~(a)~~ All statutory presumptions that place a reverse onus on an accused are unconstitutional.
- ✓(b) The determination of days, weeks and months can be described as facts which are readily ascertainable and a court may therefore take judicial notice of such facts.
- ~~(c)~~ The evidentiary burden can be described as the "risk of non-persuasion".
- ✓(d) In criminal cases, the basic rule as far as onus of proof is concerned is that he who alleges must prove.

Answer 4

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

Question 5

- ~~(a)~~ When the state is involved as a party in a civil matter, it must prove its case beyond a reasonable doubt.
- ~~(b)~~ In S v Mpumlo 1986 (3) SA 485 (OK) and S v Baleka (1) 1986 (4) SA 192 (T) it was found that videotapes are documentary evidence.
- ✓ (c) In Pillay v Krishna 1946 AD 946 the court explained multiple onus as follows: "...where there are several and distinct issues, for instance a claim and a special defence, then there are several and distinct burdens of proof..."
- ~~(d)~~ A criminal case starts off with the accused who presents evidence.

Answer 5

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

Question 6

- ~~(a)~~ The party conducting examination-in-chief may not cross-examine her own witness unless the witness has first been declared hostile.
- ~~(b)~~ Oral evidence is presented in the following order: firstly examination-in-chief, then re-examination, and then cross-examination.
- ~~(c)~~ Examination-in-chief is undertaken by the presiding officer in her capacity as "chief" of the court.
- ~~(d)~~ There is a general rule that prevents a witness from reading her witness statement, or some other statement drawn up soon after the event, before testifying or during an adjournment.

Answer 6

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

Question 7

- ~~(a)~~ Circumstantial evidence can only provide indirect evidence of a fact and the court therefore attaches less weight to this type of evidence.
- ? (b) The presumption of innocence is a true presumption, in other words it is evidential material because it places the onus of proving the accused's guilt squarely on the prosecution.
- ✓ (c) In a civil case which has to be decided on circumstantial evidence, the court's inferences must be consistent with all the facts proved and they must be the only reasonable inferences.
- ~~(d)~~ The court in S v Zuma 1995 (1) SACR 568 (CC) declared all statutory provisions which create presumptions to be invalid.

Answer 7

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

Question 8

There has been a robbery at a house in Sunnyside, Pretoria. A suspect D who matches the general description of a person seen in the vicinity of the house is arrested. A fingerprint and footprint is found at the scene and these are compared to those taken from D.

- ✓ (a) Fingerprints may constitute real and circumstantial evidence.
- ✓ (b) Judicial notice has been taken of the fact that no two fingerprints are exactly the same.
- ? (c) The two sets of fingerprints will be enlarged and compared and if seven points of similarity are found it will amount to proof that D committed the crime.
- ~~(d)~~ Footprints require an explanation by an expert and the the court is obliged to accept expert opinion as to the identity of footprints.

Answer 8

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

[TURN OVER]

Question 9

- ✓(a) The behaviour of a witness in the witness box may be real evidence regarding a relevant fact, namely his credibility as a witness.
- ✓(b) A presumption that applies unless the accused proves the opposite on a balance of probabilities, places a reverse onus on the accused.
- ~~(c)~~ Corroborative evidence may only consist of documentary or real evidence.
- ✓(d) The evidence of a co-accused must be approached with caution.

Answer 9

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

a b d

Question 10

- ✓(a) A child under seven years of age will be competent to give evidence if she understands what it means to speak the truth, has sufficient intelligence and can communicate effectively.
- ✓(b) A child under seven years of age is rebuttably presumed not to be able to commit a crime.
- ~~(c)~~ Cross-examination is conducted by the party who calls the witness.
- ✓(d) Although the scope of cross-examination is wider than that of examination-in-chief, questions asked during cross-examination should at least be relevant either to the issue or to the credibility of the witness.

Answer 10

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

TOTAL MARKS FOR SECTION 1: [30]**[TURN OVER]**

SECTION 2

- 2.1 Define the following terms:
- 2.1.1 competence to testify (2)
 - 2.1.2 corroboration (2)
 - 2.1.3 the cautionary rule (2)
- 2.2 Section 209 of the Criminal Procedure Act 51 of 1977 deals with a conviction following a confession by the accused. Briefly explain the significance of this section. (4)
- 2.3 Describe the interaction between the onus of proof and the evidentiary burden in criminal matters. You may make use of diagrams to assist your description. (10)
[20]

SECTION 3

- 3.1 Write short notes on the circumstances under which a judicial officer should take judicial notice of the law. (10)
- 3.2 Compare and distinguish between primary and secondary evidence, with respect to documentary evidence. (10)
[20]

SECTION 4

A group of ^{tourists} tourists are visiting Cape Town and are about to board their tour bus when they hear the loud screeching of tyres. One of them, a Mr Candida, turns towards the sounds and photographs a red Corvette that runs a red robot and crashes into another vehicle, a green Citigolf, that was crossing the intersection. Answer the following:

- 4.1 Mr Candida immediately writes down everything that he observed. Will he be able to refer to his notes at the subsequent trial? If so, what are the requirements for doing so? (6)
- 4.2 It is the first time that Mr Candida will appear in a court. Explain the difference between examination-in-chief and cross-examination to him. (4)
- 4.3 Mr Candida is an avid photographic enthusiast who develops his own photographs. He does not believe in using digital computerised cameras. Mr Candida has been asked to produce his photographs in court. Describe the nature of the evidence that he will produce in court. (7)

[TURN OVER]

- 4.4 Very briefly explain whether the court may take judicial notice of the functioning of the traffic lights and its impact on the case. (3)
- 4.5 Mr Candida is the only witness to the accident. How should the court evaluate his evidence? Reference should be made to the applicable case law. (10)
- [30]

TOTAL: [100]

EVI102-4 (410772)

Mei/Junie 2004

BEWYSREG MODULE 102

Tydsduur : 2 Uur

100 Punte

EKSAMINATORE :

EERSTE :

ME K MOODLEY

TWEEDE :

PROF SS TERBLANCHE

Hierdie vraestel bestaan uit 8 bladsye plus instruksies vir die voltooiing van die merkleesblad.

BELANGRIKE KENNISGEWING

AL DIE AFDELINGS IS VERPLIGTEND. AFDELING 1 BESTAAN UIT MEERKEUSEVRAE. HIERDIE VRAE MOET OP DIE MERKLEESBLAD, WAT SAAM MET DIE ANTWOORDBOEK AAN U UITGEREIK SAL WORD, BEANTWOORD WORD. U MOET DIE INSTRUKSIES OOR DIE VOLTOOIING VAN DIE MERKLEESBLAD SORGVULDIG DEURLEES. VERSUIM OM DIT TE DOEN KAN DAARTOE LEI DAT U ANTWOORDE NIE DEUR DIE REKENAAR NAGESIEN KAN WORD NIE. AFDELINGS 2 TOT 4 IS OOK VERPLIGTE AFDELINGS EN U MOET ELKEEN DAARVAN DUS BEANTWOORD. LET DAAROP DAT DAAR GEEN KEUSEVRAE IN HIERDIE VRAESTEL IS NIE.

AFDELING 1

BELANGRIK: HIERDIE AFDELING MOET IN GEHEEL OP DIE MERKLEESBLAD BEANTWOORD WORD. ELKE ANTWOORD TEL 3 PUNTE.

Vraag 1

- (a) In strafsake, waar die bewyslas op die verdediging lê, vereis die howe bewys op 'n oorwig van waarskynlikhede.
- (b) In Eskom v First National Bank of Southern Africa 1995 (2) SA 386 (A) het die Appèlafdeling bevestig dat die ligging van die bewyslas 'n kwessie van die materiële reg is.
- (c) Geen vormvereistes geld vir die indiening van reële getuienis soos wapens en verbode stowwe nie.
- (d) Voorbeelde van dokumentêre getuienis sluit die volgende in: foto's, testamente, boeke en tekeninge.

Antwoord 1

- (1) Slegs stellings (a) en (d) is korrek.
- (2) Slegs stellings (b), (c) en (d) is korrek.
- (3) Slegs stellings (b) en (c) is korrek.
- (4) Slegs stelling (a) is korrek.
- (5) Al die stellings is korrek.

Vraag 2

- (a) 'n Beskuldigde is 'n bevoegde getuie in haar eie verdediging en kan deur 'n medebeskuldigde verplig word om te getuig.
- (b) In Seccombe v Attorney General 1919 TPD 270 word 'n dokument gedefinieer as: "everything that contains the written or pictorial proof of something".
- (c) 'n Aantal waar stellings kan, hoewel hulle nie op sigself afdoende bewys van die beskuldigde se skuld uitmaak nie, mekaar onderling versterk en daartoe lei dat die beskuldigde op grond van omstandigheidsgetuienis skuldigbevind word.

Antwoord 2

- (1) Al die stellings is korrek.
- (2) Slegs stelling (c) is korrek.
- (3) Slegs stellings (b) en (c) is korrek.
- (4) Slegs stellings (a) en (c) is korrek.
- (5) Slegs stelling (b) is korrek.

Vraag 3

- (a) Wanneer die inhoud van 'n kinematografiese film ter sake is, behoort dit as dokumentêre getuienis behandel te word.
- (b) Leidende vrae mag tydens die hoofondervraging gevra word indien sulke vrae nodig is om verrigtinge te bespoedig.
- (c) Indien 'n getuie herverhoor word aangaande 'n nuwe aangeleentheid, sal die opponerende party die reg hê om die getuie aangaande hierdie nuwe aangeleentheid te kruisverhoor.
- (d) Daar is geen prosedure vir blootlegging in strafsake nie, alhoewel die staat skriftelik versoek mag word om verdere besonderhede in verband met die aanklag te verskaf.

Antwoord 3

- (1) Slegs stellings (a) en (d) is korrek.
- (2) Slegs stellings (b) en (c) is korrek.
- (3) Slegs stelling (a) is korrek.
- (4) Al die stellings is korrek.
- (5) Slegs stelling (c) is korrek.

Vraag 4

- (a) Alle statutêre vermoedens wat 'n omgekeerde bewyslas op die beskuldigde plaas, is ongrondwetlik.
- (b) Die vasstelling van dae, weke en maande kan beskryf word as feite wat geredelik vasstelbaar is, en 'n hof kan daarom geregtelike kennis neem van sulke feite.
- (c) Die weerleggingslas kan beskryf word as die "risk of non-persuasion".
- (d) In strafsake is die basiese reël met betrekking tot die bewyslas dat hy wat beweert moet bewys.

Antwoord 4

- (1) Slegs stelling (b) is korrek.
- (2) Slegs stellings (b) en (c) is korrek.
- (3) Slegs stelling (d) is korrek.
- (4) Geen stelling is korrek nie.
- (5) Slegs stelling (a) is korrek.

Vraag 5

- (a) Wanneer die staat as 'n party by 'n siviele saak betrokke is, moet hy sy saak bo redelike twyfel bewys.
- (b) In S v Mpumplo 1986 (3) SA 485 (OK) en S v Baleka (1) 1986 (4) SA 192 (T) is bevind dat videobande dokumentere getuienis is.
- (c) In Pillay v Krishna 1946 AD 946 het die hof die kwessie van veelvuldige onusse soos volg verduidelik: "...where there are several and distinct issues, for instance a claim and a special defence, then there are several and distinct burdens of proof".
- (d) 'n Strafsaak skop af met die beskuldigde wat getuienis voorlê.

Antwoord 5

- (1) Slegs stellings (a) en (c) is korrek.
- (2) Slegs stelling (b) is korrek.
- (3) Slegs stelling (c) is korrek.
- (4) Slegs stelling (d) is korrek.
- (5) Slegs stellings (a) en (d) is korrek.

Vraag 6

- (a) Die party wat die hoofondervraging onderneem kan nie haar getuie onder kruisverhoor neem nie, tensy die getuie eers vyandig verklaar word.
- (b) Mondelinge getuienis word in die volgende volgorde aangebied: eerstens hoofondervraging, dan herondervraging en dan kruisondervraging.
- (c) Hoofondervraging word onderneem deur die voorsittende beampte in sy hoedanigheid as "hoof" van die hof.
- (d) Daar is 'n algemene reël wat 'n getuie verhoed om haar getuieverklaring, of enige ander verklaring wat kort na die gebeure opgestel is te lees, hetsy voordat sy getuig of tydens 'n verdaging.

Antwoord 6

- (1) Geen stelling is korrek nie.
- (2) Slegs stelling (a) is korrek.
- (3) Slegs stellings (a) en (b) is korrek.
- (4) Slegs stellings (c) en (d) is korrek.
- (5) Slegs stellings (a), (c) en (d) is korrek.

Vraag 7

- (a) Omstandigheidsgetuienis kan slegs indirekte bewys aangaande 'n feit verskaf en die howe heg derhalwe minder gewig aan hierdie tipe getuienis.
- (b) Die vermoede van onskuld is 'n ware vermoede, met ander woorde, dit is bewysmateriaal wat die las om die beskuldigde se skuld te bewys geheel en al op die vervolging plaas.
- (c) In 'n siviele saak wat aan die hand van omstandigheidsgetuienis beslis moet word, moet die hof se afleidings rym met al die bewese feite en moet dit die enigste redelike afleidings wees.
- (d) Die hof het in *S v Zuma* 1995 (1) SASV 568 (CC) alle statutêre bepalings wat vermoedens skep ongrondwetlik verklaar.

Antwoord 7

- (1) Slegs stellings (a), (b) en (c) is korrek.
- (2) Slegs stelling (c) is korrek.
- (3) Slegs stellings (b) en (c) is korrek.
- (4) Geen stelling is korrek nie.
- (5) Slegs stelling (d) is korrek.

Vraag 8

'n Roof word by 'n huis in Sunnyside, Pretoria gepleeg. 'n Verdagte, D, wat aan die algemene beskrywing van 'n persoon wat in die omgewing van die huis gewaar is voldoen, word in hegtenis geneem. 'n Vingerafdruk en voetafdruk is by die huis gevind en met dié van D vergelyk.

- (a) Vingerafdrukke kan reële of omstandigheidsgetuienis wees.
- (b) Geregtelike kennis kan geneem word van die feit dat twee vingerafdrukke nooit dieselfde is nie.
- (c) Die twee vingerafdrukke sal vergroot en vergelyk word en indien daar sewe punte van ooreenkoms tussen die twee gevind word, sal dit bewys dat D die misdaad gepleeg het.
- (d) Die getuienis van 'n deskundige word by voetafdrukke benodig en die hof moet die opinie van die deskundige aanvaar met betrekking tot die identiteit van die voetafdruk.

Antwoord 8

- (1) Slegs stellings (a) en (b) is korrek.
- (2) Slegs stellings (a) en (d) is korrek.
- (3) Slegs stellings (b) en (c) is korrek.
- (4) Geen stelling is korrek nie.
- (5) Slegs stelling (b) is korrek.

Vraag 9

- (a) 'n Getuie se vertoning in die getuiebank kan reële getuienis wees oor 'n relevante feit, naamlik die geloofwaardigheid van die getuie.
- (b) 'n Vermoede wat geld tensy die beskuldigde die teendeel op 'n oorwig van waarskynlikhede bewys, plaas 'n omgekeerde bewyslas op die beskuldigde.
- (c) Stawende getuienis kan net uit dokumentêre of reële getuienis bestaan.
- (d) Die getuienis van 'n medebeskuldigde moet met versigtigheid benader word.

Antwoord 9

- (1) Al die stellings is korrek.
- (2) Slegs stelling (b) is korrek.
- (3) Slegs stellings (b) en (d) is korrek.
- (4) Slegs stellings (a) en (b) is korrek.
- (5) Slegs stellings (a) en (c) is korrek.

Vraag 10

- (a) 'n Kind onder die ouderdom van 7 jaar oud sal bevoeg wees om te getuig indien hy verstaan wat dit beteken om die waarheid te praat, voldoende intelligensie het en doeltreffend kan kommunikeer.
- (b) Daar geld 'n weerlegbare regsvermoede dat 'n kind onder die ouderdom van 7 jaar nie in staat is om 'n misdaad te pleeg nie.
- (c) Kruisondervraging word onderneem deur die party wat die getuie geroep het.
- (d) Alhoewel die trefwydte van kruisondervraging wyer is as dié van hoofondervraging, moet vrae tydens kruisondervraging ten minste relevant wees tot die geloofwaardigheid van die getuie of die feite in geskil.

Antwoord 10

- (1) Slegs stellings (a) en (c) is korrek.
- (2) Slegs stellings (b) en (d) is korrek.
- (3) Slegs stellings (a) en (d) is korrek.
- (4) Slegs stelling (a) is korrek.
- (5) Al die stellings is korrek.

TOTALE AANTAL PUNTE VIR AFDELING 1: [30]

[BLAAI OM]

AFDELING 2

- 2.1 Definieer die volgende begrippe:
- 2.1.1 bevoegdheid om te getuig (2)
 - 2.1.2 staving (2)
 - 2.1.3 die versigtigheidsreël (2)
- 2.2 Artikel 209 van die Strafproseswet 51 van 1977 handel oor 'n skuldigbevinding wat volg op 'n bekentenis deur die beskuldigde. Verduidelik die belangrikheid van hierdie artikel kortliks. (4)
- 2.3 Verduidelik die interaksie tussen die bewyslas en die weerleggingslas in strafsake. U kan diagramme gebruik indien dit u met hierdie verduideliking sal help. (10)
[20]

AFDELING 3

- 3.1 Skryf kort aantekeninge oor die omstandighede waaronder 'n regterlike beampte gereguleer van die reg moet kennisneem. (10)
- 3.2 Vergelyk en onderskei tussen primêre en sekondêre getuienis, in verband met dokumentêre getuienis. (10)
[20]

AFDELING 4

'n Groep toeriste besoek Kaapstad en, wanneer hulle op die punt is om hulle toerbus te bestyg, hoor hulle 'n harde geskree van bande. Een van die toeriste, 'n Meneer Candida, draai in die rigting van die geraas en neem 'n rooi Corvette af wat oor 'n rooi verkeerslig ry en in 'n groen Citigolf, wat besig is om die kruising oor te steek, vasjaag. Beantwoord die volgende vrae:

- 4.1 Meneer Candida skryf alles wat hy waargeneem het dadelik neer. Sal hy tydens die daaropvolgende verhoor na hierdie aantekeninge kan verwys? Indien wel, aan watter vereistes moet voldoen word? (6)
- 4.2 Dit is die eerste keer dat Meneer Candida in 'n hof moet verskyn. Verduidelik die verskil tussen hoofondervraging en kruisondervraging aan hom. (4)
- 4.3 Meneer Candida is 'n entoesiastiese fotograaf wat sy eie foto's ontwikkel. Hy glo nie daarin om digitale en gerekenariseerde kameras te gebruik nie. Meneer Candida is gevra om sy foto's by die hof in te dien. Verduidelik die aard van die getuienis wat hy sal indien. (7)

[BLAAI OM]

- 4.4 Verduidelik kortliks of die hof geregteik kan kennisneem van die werking van die verkeersligte en wat die impak daarvan op hierdie saak sal wees. (3)
- 4.5 Meneer Candida is die enigste getuie van die ongeluk. Hoe moet die hof sy getuie nis beoordeel? Verduidelik u antwoord met verwysing na toepaslike hofsake. (10)
- [30]**

TOTAAL: [100]