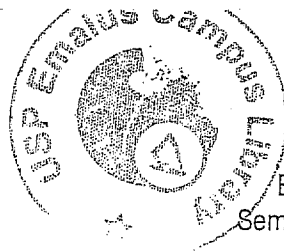


ON RESERVE



The University of the South Pacific
Emalus Campus



Examinations
Semester 1 2002

SCHOOL OF LAW

COURSE NAME: Evidence

COURSE NO: LA310

TIME ALLOWED: Three hours

READING TIME: 10 minutes

NUMBER OF PAGES: 7

NUMBER OF QUESTIONS ON PAPER: 15

NUMBER OF QUESTIONS TO BE ANSWERED: 9

MARK ALLOGATED FOR EACH QUESTION: as indicated

TOTAL MARKS: 100

MATERIALS PERMITTED IN EXAMINATION ROOM:

Writing materials

SPECIAL INSTRUCTIONS

If you need to make any assumptions in answering the questions in this exam, state clearly what these assumptions are. Where a question is not specific as to what jurisdiction is involved, and where you wish your answer to relate to a particular jurisdiction, state what that jurisdiction is.

*James Coore
17/5/02*

*Approved
Paul
17/5/02*

Part A

Answer any two of the three questions in Part A (2 x 25 = 50 marks)

1. Mr Z, a resident of Port Vila has been a customer of Telecom for the last 5 years. In May 2002, Telecom cut Mr. Z off from telephone services, and commenced an action in debt alleging that Mr Z has an arrears of 230,000 vatu owing for the 10 months prior to October, 2001. This has come as a shock to Mr Z because, according to him, he has paid all his bills as they become due and there has been no indication from Telecom until May 2002 that there were any arrears owing.

Mr Z intends to defend the lawsuit on the basis that he paid for all telephone charges in the months in which they became due and that therefore he does not owe the money. He intends to give oral evidence to this effect. His evidence will be that he always paid in cash and was given receipts for his payments. Unfortunately, Mr.Z is unable to produce any receipts to verify payment of the monies that are alleged to be owed. He will give evidence that he had receipts for payments covering the last 5 years but that they were destroyed in a fire in January, 2002.

Mr Z can produce Telecom bills from January 2002 which which show no arrears owing from previous months. Mr Z also intends to call his wife as a witness. She is prepared to give evidence that Mr.Z told her that he always pays his telephone bills on the months that they become due. She will also give evidence that her husband is an honest and reliable man and that he would not leave a bill unpaid if he owes money. She will also say that Mr Z is member of an environmental organization which is seeking to preserve the coral reefs of Vanuatu.

In support of its claim, Telecom intends to introduce printouts of bills which are taken from its computer. The printouts for the 6 months before October 2001 show arrears which, by October 2001 show arrears of 230,000, the amount claimed to be in arrears. Mr X, the accounts manager of Telecom and the only witness who will be called by Telecom will give evidence that these printouts were automatically generated by a Telecom computer; the same computer that keeps track of all calls made by each of its customers.

Although Mr X can identify and explain the computer printouts showing the amounts for September and October he has no personal knowledge of whether the payments were made or not. Curiously however, there are no arrears shown on the bills for the months succeeding October, 2002, until May 2002 when the arrears appears.

Mr X intends to give evidence about the computer system in operation at Telecom. He will describe how it monitors and measures all calls in Vanuatu and does automatic billing according to the information it records. He intends to describe how, in his opinion, the computer's information

about the arrears is correct. However, he will admit that between October 2001 and April 2002, an error in the system caused information about the arrears to be temporarily erased. He can explain that this is why Mr Z's telephone bills did not show the arrears between October 2001 and May 2002. However, he intends to testify that the head of the computer department at Telecom advised him that the information on Mr. X's May 2002 bill, showing the arrears is correct in all respects.

Identify and discuss evidential issues that relate to this matter including any evidentiary difficulties that Mr Z or Telecom could encounter at trial.

2. Even though it is a criminal offence, sorcery is a growing problem in Pacifica, a Pacific Island country. The relevant section of the Pacifica Penal Code states that "... a person who practices sorcery is guilty of an offence unless that person practices sorcery without intent to harm any person, the burden of proof of which is upon that person."

An old man, Chief George recently died suddenly in his village. Jimmy Cliffhanger also a resident of the village was charged with sorcery in connection with the death. The prosecution plans to adduce the following evidence. The laws of Pacifica also incorporate the common law rules of evidence typical of the jurisdictions of the USP region.

- a) Billy, who is a resident of the village will say that he has known Jimmy all his life. On a number of occasions, he has seen Jimmy behaving in a cruel way towards old men, children and dogs.
- b) Nurse Y will say that he examined George a week before his death and as far as he could tell, George was in good health.
- c) Doctor A will say that he examined George's body 6 hours after his death. As far as he could tell, George was not suffering from any illnesses which could have caused his death.
- d) Andy will say that Jimmy's family and George's family have had a long standing dispute over the ownership of customary land near the village. Andy will say that George was using the land for growing crops for 3 years but that everyone in the village knows that the land has belonged to Jimmy's family for generations.
- e) Mary will say that just before George died, she heard him say the following words: "Jimmy, it was Jimmy. He told me that he would pay me back even if he had to use sorcery to do it."
- f) Constable Victor will say that when he arrested Jimmy on the sorcery charge, he took him to the police station. He told Jimmy that it was time to give a statement. He will say that Jimmy made a short written statement. The statement is as follows.

I, Jimmy Cliffhanger am a sorcerer. I used a secret potion and a secret ritual against George. I know that what I did was wrong but I did not intend to harm him. I only wanted to scare him.”

Signed Jimmy Cliffhanger.

g) Constable Victor will also say that Jimmy was convicted for the offence of sorcery once before in 1997.

Identify and discuss any evidential issues that are likely to arise at Jimmy's trial.

3. John is charged with being drunk in a public place. The prosecutor calls Cora as a witness. Her evidence, as adduced in examination in chief is as follows:

My name is Cora and I am the President of the Anti Alcohol Society of Port Vila. I was on my way home from a meeting of the society on May 1. I was walking and was in a hurry to get home so I crossed through Independence Park. It was quite dark. As I walked carefully through the park, I was thinking about the need to eliminate the evils of alcohol from society, a topic that had been on our agenda at the meeting. Suddenly I heard a frightening sound coming from the bushes. It was something between a laugh and a cry. It was none other than John, that ugly fellow with a drinking problem who bothers people around town. Yes, that is him sitting over there in court (pointing to the defendant). I could tell it was him from his voice. I got a look at him as he turned to run away. His eyes were bloodshot and his breath smelled like alcohol. A couple of meters from where I stood, I noticed an empty bottle. The label said, "Misty Highlands Scotch." As soon as I got home I told my daughter, Rhoda that I had just seen John drunk in the park. He really is an awful man.

- (a) State 3 objections (and the basis for them) you would make if you were John's lawyer listening to this evidence.
- (b) State 3 facts that would support a submission that the evidence in chief of Christa should be given little credit.
- (c) John is thinking of giving evidence in his own defence. However, he has a previous criminal record for criminal negligence. He doesn't want to be forced to disclose that at his trial. Advise him whether that will happen. If it is disclosed at trial, what use could the trier of fact make of it?
- (d) John arrived home drunk on the night of the alleged offence. His wife gave him a very bad time, yelling at him and abusing him for being a poor husband. Before the trial, she left John and they have

been living separately since. She has gone to the police and offered to give evidence about John's condition on the night of the offence. Will she be allowed to do this? Explain.

Part B

Answer any 5 of the 8 questions in this part. (5 x 6 marks = 30 marks)

4. In a criminal trial, the prosecutor wishes to prove that the accused, Marlene Mal traveled on the ship, "The Tina" from Port Vila to Santo between February 1 and February 3, 2002. The police have made extensive inquiries of the crew of the ship but nobody can remember whether Ms Mal was on the ship. However, the police do produce a copy of a ticket. The information printed on the ticket includes the following.

"Tina Shipping Company, Vila to Santo, February 1, 2002.
Passenger name: M. Mal. Paid 35,000 Vatu."

Discuss the evidentiary issues which pertain to the introduction of this ticket as evidence for the prosecution.

5. Some evidence may be introduced for one purpose but not for others. Describe 2 rules of evidence that exemplify this statement.
6. If a witness forgets relevant parts of what was expected to be part of his or her testimony, the witness may be permitted, under certain circumstances, to refresh his or her memory in court. What are those circumstances.
7. State the principle for which any two of the following cases stand.

Myers v DPP (HL) [1965] AC 1001

Sparks v R [1964] AC 964

Conway v Rimmer (HL) [1968] AC 910

R v Sang (HL) [1980] AC 402

8. What is a collateral issue? Explain the rule of evidence regarding cross examination on a collateral issue.
9. Without prejudice communications between parties who attempt to negotiate a settlement are privileged and require waiver by both parties in order to be disclosed to the court before judgment. However, after judgment on the main issue, a party may be at liberty to disclose to the court the without prejudice communications. Explain how and why this occurs.

10. One of the most important common law exceptions to the hearsay rule concerns statements against interest. Briefly explain the operation of this rule in criminal trials where an accused makes a confession to a "person in authority" prior to the trial.
11. A statement made by a person who dies before trial may sometimes be admitted as an exception to the hearsay rule. Explain.
12. Explain the circumstances under which a successful no case submission may be made. What are the consequences?

Part C

Answer any two of the questions in this part. (2 x 10 = 20 marks)

13. Betsy, a 22 year old woman alleges that she has been raped. Sam is charged with rape in connection with the allegation. After Sam's arrest, Betsy attends an identification parade at the police station. Although Sam is one of the people in the identification parade, Betsy is unable to identify him as her attacker.

At the trial of the matter, Betsy gave evidence. Her evidence dealt with how, when she was walking home from the night club, she was grabbed from behind and dragged into the bushes where she was sexually assaulted. She identified Sam (who was sitting in the prisoner's box in court) as her attacker.

Betsy's mother gave evidence that, on the night of the alleged attack, Betsy arrived home looking disheveled, with dirty clothes and crying. She also gave evidence that Betsy told her about how she was raped.

Lucy admits in cross examination that she had been drinking on the night of the offence.

There is no other evidence for the prosecution and Sam does not give evidence or call any evidence in his defence.

Identify and briefly discuss 5 issues of evidence that arise out of the above.

14. Briefly describe how judicial notice and presumptions operate to establish facts in court without a party having to call evidence of the fact.
15. One commentary describes the law of evidence in the following words.
"Founded apparently on the propositions that all jurymen are deaf to reason, that all witnesses are presumptively liars and that all

documents are presumptively forgeries, it has been added to, subtracted from and tinkered with for two centuries until it has become less of a structure than a pile of builder's debris."

With reference to the rules of evidence that we have covered in this course, comment on the validity of this statement.