



SCHOOL OF LAW

COURSE NAME: Evidence

COURSE NO: LA310

TIME ALLOWED: Three Hours

READING TIME: Ten Minutes

NUMBER OF PAGES: 6

NUMBER OF QUESTIONS ON PAPER: 12

NUMBER OF QUESTIONS TO BE ANSWERED: 7

MARK ALLOCATED FOR EACH QUESTION: as indicated

TOTAL MARKS: 100

MATERIALS PERMITTED IN EXAMINATION ROOM:

SPECIAL INSTRUCTIONS

Please do not turn over any page until you are told to do so.

Part A

Answer either of the two questions in this part. (20 marks)

Question 1

Joe is charged with illegally operating a betting shop in Port Vila. The prosecutor intends to introduce into evidence a tape recording to be played in court in its case against Joe. The tape recording was obtained by the police who broke into Joe's apartment without a search warrant and wired the tape recorder to his telephone without Joe's knowledge. Later they broke into the house again and picked up the tape recorder and tape.

A police investigator will be called as a witness to identify the tape. The prosecutor intends to play the following part of the tape.

Voice 1: Hey Joe, I want to place a bet for \$100 on Blue Charger in the 4th race in Sydney this afternoon.

Voice 2: OK John, that's not a problem. One hundred dollars on Blue Charger.

Voice 1: You got it.

Voice 2: OK John, anything else?

Voice 1: No, that's it Joe. Talk to you later.

The prosecutor will also call the police officer to give an opinion that the Voice 2 is that of Joe, the accused.

- a) You are Joe's lawyer and are aware of the prosecutor's intentions. What submission would you make in relation to the prosecutor's intentions to admit this evidence?
- b) What response could the prosecutor make to your submission?
- c) Do you think that the prosecutor has a hearsay problem with the introduction of this tape? Why or why not?

Question 2

The law of evidence sometimes gives less priority to the search for truth than it gives to other policy interests.

Discuss.

Part B

Answer one of the two questions in this part. (30 marks)

Question 3

Two women, Jill and Janet were stopped in Jill's car by a police officer. When the police officer stopped the car he discovered a television set on the back seat of the car. The police officer thought he recognized the TV as being one which was recently stolen during a break in at an appliance store. Jill and Janet were subsequently jointly charged with possession of stolen property.

Janet decided to give evidence in her own defence. A summary of Janet's evidence is as follows:

She was only getting a ride with Jill to her karate lesson. Before she got into the car, she knew nothing about the TV.

She noticed the TV in the back seat after she got into the car but didn't think too much about it at the time.

After their arrest, Jill had told her "in confidence" that she got a "great deal" on the TV because she bought it from the person who stole it and wanted to get rid of it. Janet said that this is the first indication she had that the TV was stolen.

The police investigation has revealed that Janet was convicted of theft 4 years ago.

Suppose Jill decided to give evidence. In her evidence, she denied any knowledge that the TV was stolen at the time of her arrest. She denied that she ever told Jill about the TV being stolen. She says that she purchased the TV from a friend named Nancy. She further says that Nancy told her that the TV was her own set which she had been given as a gift by her parents for graduation.

The prosecutor has located Nancy. Nancy makes a statement that she never owned a TV and had never given one to Jill.

- a) What hearsay issues arise in Jill's evidence?
- b) Can Jill cross examine Janet?
- c) Can the prosecutor cross examine Janet on her criminal record? Why or why not.
- d) *See section 1 of the Criminal Evidence Act of 1898. One Janet has made character an issue*

- e) What presumption operates in this case? How does it affect Jill's case? Who would determine whether it was rebutted?
- f) Can the prosecutor introduce Nancy's statement as evidence?
- g) Can the prosecutor call Nancy to give evidence? In what circumstances?
- h) Are there any other issues of evidence that you can identify from the above?
- i) Suppose Jill did not volunteer to give evidence on her own behalf. Could Janet call Jill to give evidence about what she had told Janet about the stolen property?

Question 4

Billy, who was driving his own car, struck David, a pedestrian who was injured. He is now being sued by a David. David's claim alleges in part that Billy was negligent in driving a motor vehicle knowing that he had defective brakes. Billy hired Jacki Tugud, a lawyer, to defend him. Tugud filed a defence which denies all allegations of negligence.

One day before the trial, Billy happened to meet Tugud in the grocery store. They got into a conversation in front of the meat counter. During the conversation, Billy told Tugud:

"You know I had noticed for a couple of months before the accident that my brakes weren't working very well. Sometimes, I had to pump with my foot to get the brake to engage. The brakes just didn't sound right and they didn't feel right."

The butcher across the counter overheard the conversation between Billy and his lawyer. The butcher happens to be a friend of the lawyer representing the plaintiff and reported to the lawyer what he heard.

Tugud decides to retain Jo Bean an automotive engineer to have a look at Billy's car. The engineer provides Tugud with a letter. The contents of the letter include the following.

"I examined the brakes of Billy's car and subjected them to several recognized scientific tests to determine whether they had been functional at the time of the accident. On the basis of these tests [which are described in some detail in the report] I have concluded that the brakes were not working at the time of the accident and had not been working properly for some time before the accident."

The plaintiff retained Mr Fixit, to examine the brakes in Billy's car after the accident. Fixit is well known mechanic who is employed by Vango Marine, in the

maintenance of diesel engines. After he examined the car, he sent a written report to the plaintiff's lawyer. Part of the report contained the following.

"The brakes in the car I examined (Billy's car) were defective. In my opinion, this would have been obvious to anyone who had been driving the vehicle prior to the accident. On this basis, it is my opinion that Billy was clearly negligent in the operation of the vehicle."

While preparing Billy's case, Tugud located Sally, a bystander and witness to the accident. He interviewed Sally and took a statement from her. Part of Sally's statement read as follows.

I was listening to hip hop on my MP3 player as I was walking along the road. When I got to the intersection where the accident happened, I saw Billy driving through the intersection. His head turned to look at me as he went through the intersection. He did not seem to be watching where he was going.

- a) Discuss any evidential issues that might arise if the plaintiff's lawyer decides to call the butcher to give evidence of what he overheard in the grocery store.
- b) Would Tugud want to use the report from Bean at trial? Does Tugud need to disclose the report from Jo Bean to the plaintiff before trial? Can the plaintiff compel disclosure of the report at trial?
- c) Can Billy be cross examined on what he said to his lawyer in the grocery store? Explain.
- d) Sally is called by the plaintiff's lawyer as a witness. Tugud has learned that not only was Sally listening to hip hop at the time of the accident but she was also smoking dope. What evidentiary issues are involved if Tugud attempts to cross examine Sally about the fact that she was smoking dope?
- e) Part of David's claim includes an amount for loss of earnings. His evidence is that he was off work for 14 weeks after the accident as a result of his injuries. At the trial he produces a letter from his employer which he seeks to tender as evidence. The letter includes the following:

David is a very good employee. He was absent from work from [date of accident] continually for 14 weeks. If he had been at work, he would have earned \$200 per week for those 14 weeks.

What evidential issues relate to the introduction of the letter as evidence?

Part C

Answer any 5 of the questions in this part (5 x 10 = 50 marks)

Question 5

Solicitor-client (legal professional) privilege is an important feature of the legal and justice system. Describe the scope of this privilege, its limits and circumstances under which it will not

Question 6

A voir dire or a trial within a trial is most commonly held in a criminal case to determine whether a confession made by the accused is admissible. Describe the issues, the criteria and the burden of proof that applies during a voir dire.

Question 7

Distinguish between examination in chief and cross examination. Outline the main rules of evidence pertaining to each, including the rules concerning hostile witnesses.

Question 8

Describe the rule against previous consistent statements. What is the main reason for the rule? What are three major exceptions to the rule?

Question 9

Explain how the burden and standard of proof in a criminal trial is different than that in a civil trial.

Question 10

Write a note on judicial notice. Explain what purpose it serves and how it operates.

Question 11

What is corroboration? When is corroboration required? When is a warning about corroboration required?

Question 12

Explain the rule regarding finality of answers to collateral questions. What are two exceptions to the rule?