



The University of the South Pacific

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SCHOOL OF LAW

LA 310 LAW OF EVIDENCE

FINAL EXAMINATION – SEMESTER 1, 2006

Time Allowed 3 hours plus 10 minutes reading

100 marks (60% of final grade)

INSTRUCTIONS

1. This exam has 4 parts:
 - a. Part A: 30 marks
 - b. Part B: 30 marks
 - c. Part C: 20 marks
 - d. Part D: 20 marks
2. There is a choice available in each part
3. You are required to answer a total of 5 questions including question 1.
4. Write your answers in the answer booklet provided.
5. This exam is worth 60% of your overall mark.

Approved

M. [Signature]

26/4/06

Part A This part consists of only question 1. However, **within the question you are given a choice.**

Question 1 Answer any 3 of the 5 parts of this question (3 x 10 = 30 marks)

- (a) (i) What is corroboration?
(ii) With reference to case law, discuss whether a lie told by an accused can amount to corroboration.
(iii) Can a recent complaint in a sexual case be treated as corroboration? Why or why not?
- (b) Briefly describe 3 means by which a fact may be established in court without having to call evidence of that fact.
- (c) In the Solomon Islands civil case of Clement Waiwori v Attorney General 320 of 1995, the plaintiff sued for damages for unlawful arrest and detention. A presumption operated in favour of the plaintiff in that case. Explain the nature of the presumption and how it operated in the plaintiff's favour.
- (d) The common law has been restrictive about the *quality* of evidence but not very particular about the *quantity* of evidence required to make a finding. Briefly comment on this statement.
- (e) When can a previous inconsistent statement be put to a witness? What purpose is served by establishing that a witness made a previous inconsistent statement?

Part B Answer any 2 of the 3 questions in Part B (2 x 15 = 30 marks)

Question 2

Charlie and Jeff were jointly charged with possession of marijuana. The prosecutor called a police officer as a witness. The police officer described how he surprised Charlie and Jeff as they were sitting in a parked car one night. The police officer also testified that Charlie was sitting in the driver's seat and Jeff was sitting in the passenger seat, that the smell of marijuana was coming from the vehicle and that there was a bag of what turned out to be marijuana sitting on the seat between Charlie and Jeff.

Jeff gave evidence in his own defence. His evidence was that he had been asleep in the car and did not know anything about the marijuana, that it was not there when he went to sleep but that when he woke up, just before the police arrived, he noticed the driver smoking marijuana and the bag sitting on the seat. He added that he was not surprised that Charlie was smoking marijuana because Charlie has a reputation as a user of illegal drugs.

- (a) The prosecutor is aware that Jeff has a criminal record for possession of illegal firearms. Can the prosecutor cross examine Jeff about this record? Why or why not?
- (b) Can Jeff call Charlie as a witness in his defence? Why or why not?
- (c) Briefly discuss the burden of proof in this case.

Question 3

Lucy, a 19 year old girl alleges that she was raped. Elmore, an old boyfriend of Lucy is charged with rape in connection with the allegation. Lucy gives evidence for the prosecution. Her evidence deals with how, when she was walking home from the night club she was grabbed from behind, dragged into the bushes and raped. She identifies Elmore in court as the person who raped her. The only other witness is Lucy's mother who testifies that when Lucy arrived home she went into the bedroom and slammed the bedroom door. A half hour later, she heard Lucy crying and went into the bedroom to

ask what the matter was. Lucy then told her that she had been raped by Elmore. The prosecutor only calls these two witnesses.

Elmore gave evidence in court to the effect that Lucy consented to sexual intercourse. Lucy admits in cross examination that she had been drinking heavily on the night of the offence.

Discuss evidential issues that arise in this case including burden of proof.

Question 4

Joe is charged with illegally operating a betting shop in Port Vila. The prosecutor intends to introduce into evidence an audiotape to be played in court. The audiotape was obtained by police, who broke into Joe's home without a search warrant and hooked up a tape recorder that automatically taped telephone calls. They obtained a recording that contains the following exchange:

Voice 1: Joe, I would like to place a \$100 bet on Red Angel in the 5th Race at Sydney.

Voice 2: Ok Jimmy, no problem, that's \$100 on Red Angel in the 5th.

Voice 1: Right

Voice 2: Ok Jimmy, your credit is good. Talk to you later.

Nobody is ever identified as the person who is Voice 1. However, a police investigator will be called as a witness to say that, in his opinion, Voice 2 is Joe, the accused in this case.

- (a) You are Joe's lawyer and are aware of the Prosecutor's intentions. Prepare a submission that you would make in opposition to the introduction of this tape as evidence.
- (b) What response could the prosecutor make to your submission?

Part C – Answer either question in this part. (20 Marks)

Question 5

If an accused makes a statement incriminating him or herself in respect of a charge, in what circumstances may the prosecutor introduce the statement (confession) at the trial of the accused? Describe the process and the legal test which is applied to determine whether the statement may be introduced. Discuss how the introduction of confessions relates to the rule against hearsay.

Question 6

Describe 4 statutory rules that permit different types of documents to be introduced into evidence. In point form outline the pre-requisites that are required to introduce documents under each of the rules. If your answer is specific to a particular jurisdiction, identify the jurisdiction.

Part D Answer either question in this part. (20 Marks)

Question 7

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 ride 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 has 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) What presumption operates in this case? How does it affect Jill's case? Who would determine whether it was rebutted?
- e) Can the prosecutor introduce Nancy's statement as evidence?
- f) Can the prosecutor call Nancy to give evidence? In what circumstances?
- g) Are there any other issues of evidence that you can identify from the above?

- h) 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 8

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?

End of exam