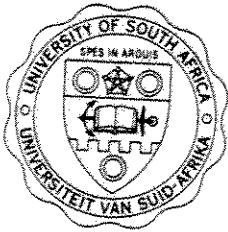


Unique number of paper
Unieke nommer van vraestel

407933



UNISA

EVI102-4 (407933)

May/June 2003

EVIDENCE MODULE 102

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

MS K MOODLEY

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 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]
UNISA

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) Where primary evidence is required, a copy of the document will be acceptable.
- (b) In criminal cases where the onus lies exceptionally on the defence, the burden requires proof upon a preponderance of probabilities.
- (c) As far as electronic documents are concerned, the first printout is regarded as the original document.
- (d) Our courts do use standard dictionaries to establish the meaning of words, and history textbooks have been used to establish historical facts.

Answer 1

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

Question 2

- (a) The party conducting the 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, then cross-examination.
- (c) Examination-in-chief is undertaken by the presiding officer in his capacity as "chief" of the court.
- (d) Refreshing of memory by a witness is only possible before she starts giving evidence.

Answer 2

- (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.

[TURN OVER]

Question 3

- ✓ (a) The most important consideration in S v Zuma 1995 (1) SACR 568 (CC) was that a statutory presumption is unconstitutional if it allows a conviction despite the existence of a reasonable doubt about the guilt of the accused.
- ✗ (b) In civil cases, the possibility exists that different parties might bear the onus of proof with respect to different issues in the same case, therefore the onus shifts from one party to the other.
- ✓ (c) In S v Meaker 1998 (2) SACR 73 (W) the court dealt with a reverse onus presumption and found that it was not a violation of the presumption of innocence as contained in the Constitution.
- ✓ (d) These days a distinction is no longer made between degrees of secondary evidence.

Answer 3

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

Question 4

- ✓ (a) A court sitting in Randburg may take judicial notice of the situation of the Randburg city hall.
- ✓ (b) Judicial notice may be taken of the fact that the fingerprints of no two persons are identical.
- ✓ (c) Judicial notice may not be taken of facts contained in medical or technical textbooks.
- ✓ (d) The courts have to take notice of common law, no matter how vague or obscure a particular common-law rule might be.

Answer 4

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

[TURN OVER]

Question 5

- (a) *Res ipsa loquitur* means that there is an inference that, due to an office routine, a letter was actually posted.
- (b) The only rights contained in section 35 (3)(h) of the Constitution are the right to be presumed innocent and the right to remain silent.
- (c) The presumption that a marriage is valid is an irrebuttable presumption of law.
- (d) Circumstantial evidence can only provide direct evidence and inferences then have to be drawn about the prohibited act.

Answer 5

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

Question 6

- (a) Circumstantial evidence will always carry less weight than direct evidence.
- (b) Because of the special status of presumptions of fact it is a good thing for the court to adopt piecemeal reasoning in cases where such presumptions occur.
- (c) In a civil case which has been 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) In cases based on circumstantial evidence it is often useful if the judge is a good judge of character.

Answer 6

- (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.

[TURN OVER]

Question 7

- (a) Our courts apply the cautionary rule to the evidence of a police trap because there are valid reasons for suspecting the reliability of their evidence.
- (b) The principle that corroboration should consist of independent evidence is derived from the rule against self-corroboration.
- (c) Nowadays, silence by the accused is a sure sign of a guilty conscience and can be used as a form of circumstantial evidence to bolster a weak case.
- (d) A court may judicially notice a fact which is not a general knowledge fact, only if that fact is "notorious among all reasonably well-informed people in the area where the court sits."

Answer 7

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

Question 8

- (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) Corroboration is required by statute only in the case of an extra-judicial admission.
- (d) The evidence of a co-accused must be approached with caution.

Answer 8

- (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.

[TURN OVER]

Question 9

- (a) Oral evidence is the most common means of adducing evidence, and as a general rule need ~~not~~ be given under oath.
- ✓ (b) Non-compliance with the cautionary rule, which has developed from practice and is independent of legislation, will generally result in the finding of the court being set aside.
- ✓ (c) The basic principle is that a court can take judicial notice of facts that are readily ascertainable, if they are readily ascertainable from a source of indisputable authority.
- ✓ (d) A "reverse onus" is a legal onus of proof that is placed on the accused. It has to be discharged on a balance of probabilities.

Answer 9

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

Question 10

- ~~(a)~~ If the content of a document has to be proved, secondary evidence will sometimes be accepted, but it has to be in writing.
- ✓ (b) The primary evidence of a document is in fact the original document.
- ~~(c)~~ In a theft case, a historical photograph which is stolen from a museum can be classified as documentary evidence.
- ✓ (d) While someone is a co-accused in a specific case, she will be incompetent to give evidence on behalf of the state.

Answer 10

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

Total marks for SECTION 1: 30

1.30.

[TURN OVER]

SECTION 2

book
real
plan
draw
picture

- 2.1 Discuss the competence of children to testify. (5)
- 2.2 Describe the purpose and related principles of cross-examination. (5)
- 2.3 Define the following:
- 2.3.1 Corroboration (5)
- 2.3.2 Public document (5)

1.50

[20]

SECTION 3

- 3.1 Write notes on statutory presumptions with particular emphasis on S v Zuma 1995 (1) SACR 568. (10)
- 3.2 Outline the principles in relation to the cautionary rule in respect of accomplices, as listed in S v Masuku 1969 (2) SA 375 (N). (10)

[20]

SECTION 4

2.15

A couple, Mr. V. Mbuye and Ms. T. Sandile, are parking their car in an open air parkade near the restaurant where they are going to for the evening, when they are attacked by Slim Shady. Slim demands that they hand over their motor vehicle. When Mr. V. Mbuye hesitates he is shot and killed instantly. Unbeknown to Slim the parkade has a security video camera which captures the incident. Ms. T. Sandile is the only witness to the incident.

- 4.1 Slim Shady has refused representation at the trial. As the judicial officer, explain the interaction between the onus of proof and the evidentiary burden to him in order to get him to do accept legal representation. (10)
- 4.2 Explain what precautions, if any, you would take as judicial officer in assessing Ms. T. Sandile's testimony. (10)
- 4.3 Assume that you are the prosecutor in the case. What arguments would you put forward for the admission of the videotape? (10)

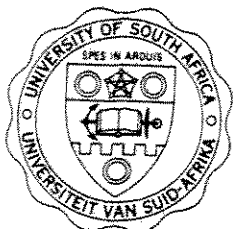
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TOTAL: 100

2.45

Unique number of paper Unieke nommer van vraestel
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407933



UNISA

EVI102-4 (407933)

Mei/Junie 2003

BEWYSREG MODULE 102

Tydsduur : 2 Uur

100 Punte

EKSAMINATORE :**EERSTE :**

ME K MOODLEY

TWEDE :

PROF DP VAN DER MERWE

Hierdie vraestel bestaan uit sewe (7) bladsye plus intruksies vir die voltooiing van 'n 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) Wanneer primêre getuienis benodig word, sal 'n afskrif van die dokument aanvaarbaar wees.
- (b) In strafsake, waar die bewyslas slegs by wyse van uitsondering op die verdediging rus, vereis daardie las bewys op 'n oorwig van waarskynlikhede.
- (c) Wat "elektroniese dokumente" aanbetref, word die eerste uitdruk as die oorspronklike dokument beskou.
- (d) Ons howe gebruik tog standaard woordboeke om die betekenis van woorde te bepaal, en geskiedenis- handboeke is al gebruik om historiese feite vas te stel.

Antwoord 1

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

Vraag 2

- (a) Die party wat die hoofondervraging onderneem kan haar getuie nie 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) Geheueverfrissing deur 'n getuie is slegs moontlik voordat sy met getuienisaflegging begin.

Antwoord 2

- (1) Nie een van die stellings 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.

[BLAAI OM]

Vraag 3

- (a) Die belangrikste oorweging vir die hof in *S v Zuma* 1995 (1) SASV 568 (KH) was dat 'n statutêre vermoede ongrondwetlik is indien dit 'n skuldigbevinding toelaat, alhoewel daar redelike twyfel oor die skuld van die beskuldigde bestaan.
- (b) In siviele sake bestaan die moontlikheid dat verskillende partye die bewyslas met betrekking tot verskillende geskilpunte in dieselfde saak mag dra en derhalwe skuif die bewyslas van die een party na die ander.
- (c) In *S v Meaker* 1998 (2) SASV 73 (W) het die hof met 'n vermoede van omgekeerde bewyslas gehandel en het bevind dat dit nie op 'n skending van die vermoede van onskuld, soos in die Grondwet vervat, neerkom nie.
- (d) Deesdae word daar nie meer 'n onderskeid gemaak tussen grade van sekondêre getuienis nie.

Antwoord 3

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

Vraag 4

- (a) 'n Hof wat in Randburg sit, kan geregtelik kennis neem van die ligging van die Randburgse stadsaal.
- (b) Daar kan geregtelik kennis geneem word van die feit dat vingerafdrukke van geen twee mense identies is nie.
- (c) Geregtelike kennis kan nie geneem word van die feite wat in mediese of tegniese handboeke vervat is nie.
- (d) Die hof moet geregtelik kennis neem van die gemene reg, hoe vaag of duister 'n sekere gemeenregtelike reël ook al mag wees.

Antwoord 4

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

[BLAAI OM]

Vraag 5

- (a) *Res ipsa loquitur* beteken dat daar 'n vermoede is dat, weens kantoorroetine, 'n brief werklik gepos is.
- (b) Die enigste regte vervat in artikel 35(3)(h) van die Grondwet is die reg om onskuldig geag te word en die reg om te swyg.
- (c) Die vermoede dat 'n huwelik geldig is, is 'n onweerlegbare regsvermoede.
- (d) Omstandigheidsgetuienis kan slegs direkte getuienis bied en afleidings moet dan daarvan gemaak word aangaande die verbode handeling.

Antwoord 5

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

Vraag 6

- (a) Omstandigheidsgetuienis sal altyd minder gewig dra as direkte getuienis.
- (b) Weens die spesiale status van feitlike vermoedens, is dit 'n goeie ding vir 'n hof om 'n stuk-vir-stuk redenasie te volg in sake waar sulke vermoedens voorkom.
- (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) In sake wat op omstandigheidsgetuienis berus, is dit dikwels nuttig indien die regter ook 'n goeie beoordelaar van karakter is.

Antwoord 6

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

Vraag 7

- (a) Ons howe pas die versigtigheidsreël toe op die getuienis van 'n polisielokval aangesien daar geldige redes bestaan om agterdochtig te wees aangaande die betroubaarheid van hul getuienis.
- (b) Die beginsel dat stawing moet bestaan uit onafhanklike getuienis is afgelei van die reël teen selfstawing.
- (c) Deesdae is stilswye deur die beskuldigde 'n sekere aanduiding van 'n skuldige gewete en kan dit gebruik word as 'n soort omstandigheidsgetuienis om 'n swak saak te versterk.
- (d) 'n Hof mag geregtelik kennisneem van 'n feit wat nie algemene kennis is nie, slegs indien daardie feit "welbekend is onder alle redelik goed ingeligte mense in die gebied waar die hof sit."

Antwoord 7

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

Vraag 8

- (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 omgekeerdebewyslas op die beskuldigde.
- (c) Stawing word slegs in die geval van 'n buiteregterlike erkenning deur enige wet vereis.
- (d) Die getuienis van 'n medebeskuldigde moet met versigtigheid benader word.

Antwoord 8

- (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 9

- (a) Mondelinge getuienis is die mees algemene wyse om getuienis af te lê, en dit hoef nie, as 'n algemene reël, onder eed afgelê te word nie.
- (b) Nie-nakoming van 'n versigtigheidsreël, wat uit die praktyk ontwikkel het en onafhanklik is van wetgewing, sal gewoonlik daartoe lei dat die bevinding van die hof tersyde gestel word.
- (c) Die basiese beginsel is dat 'n hof geregteelik kan kennisneem van feite wat geredelik vasstelbaar is, mits dit vasstelbaar is vanuit 'n bron van onbetwiste gesag.
- (d) 'n "Omgekeerde bewyslas" is 'n regsbeuyslas wat op die beskuldigde geplaas word. Voldoening daaraan moet geskied op 'n oorwig van waarskynlikhede.

Antwoord 9

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

Vraag 10

- (a) As die inhoud van 'n dokument bewys moet word, sal sekondêre getuienis onder sekere omstandighede aanvaar word, maar dit moet op skrif wees.
- (b) Die primêre getuienis van 'n dokument is inderwaarheid die oorspronklike dokument.
- (c) 'n Historiese foto wat uit 'n kunsmuseum gesteel word, kan geklassifiseer word as dokumentêre getuienis in die daaropvolgende diefstalsaak.
- (d) Solank as wat iemand 'n medebeskuldigde in 'n spesifieke saak is, sal sy onbevoeg wees om vir die staat te getuig.

Antwoord 10

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

Totale aantal punte vir AFDELING 1: 30

[BLAAI OM]

AFDELING 2

- 2.1 Bespreek die bevoegdheid van kinders om te getuig. (5)
- 2.2 Beskryf die doel en beginsels met betrekking tot kruisondervraging. (5)
- 2.3 Definieer die volgende:
- 2.3.1 Stawing (5)
- 2.3.2 Openbare dokument (5)
- [20]**

AFDELING 3

- 3.1 Skryf 'n aantekening oor statutêre vermoedens met beklemtoning van S v Zuma 1995 (1) SACR 568. (10)
- 3.2 Skets die beginsels van die versigtigheidsreël met betrekking tot medepligtiges, soos dit in S v Masuku 1969 (2) SA 375 (N) gelys word. (10)
- [20]**

AFDELING 4

Mnr. V. Mbuye en Me. T. Sandile wil hulle motor in 'n oop parkeerterrein parkeer, naby die restaurant wat hulle wil besoek vir die aand, toe hulle deur Slim Shady aangeval word. Slim eis dat hulle hul motor aan hom moet oorhandig. Mnr. V. Mbuye weifel en word noodlottig geskiet. Slim is onbewus van 'n sekuriteits video-kamera wat die voorval opneem. Me. T. Sandile is die enigste getuie.

- 4.1 Slim Shady het die dienste van 'n prokureur met betrekking tot die verhoor geweier. Jy is die voorsittende regter en moet die wisselwerking tussen die bewyslas en die weerlegginglas vir hom verduidelik om te verseker dat hy wél die dienste van 'n prokureur aanvaar. (10)
- 4.2 Verduidelik watter voorsorgmaatreëls jy, as regter, in verband met die beoordeling van Me. T. Sandile's se getuienis sal neem. (10)
- 4.3 Gestel jy is die staatsaanklaer. Wat is jou argumente ten gunste van toelating van die videoband? (10)
- [30]**

TOTAAL: 100