



جامعة السلطان الشريف علي الإسلامية  
UNIVERSITI ISLAM SULTAN SHARIF ALI  
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

**Faculty of Shariah and Law**  
**Semester 2, 2020/2021 Academic Session**

**Final Examination**  
**Question Paper**

**Course Code : LB4302**  
**Course Name : Law of Evidence II**  
**Course Level : Bachelor of Laws (LLB) & Bachelor of Shariah Law (BSL)**  
**Time : 3 hours**

**Reference(s) allowed:**  
Evidence Act (Chapter 108)

**Notes:**

1. Answer any 4 (four) of the following questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

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**QUESTION 1 (15 Marks)**

The Magistrate's Court allowed Ana's claim against Kamal for negligently driving his car into Ana's car and thereby causing injury to Ana. The Magistrate's Court further ordered for damages to be assessed and fixed a further hearing date to assess the damages.

Ana seeks your advice to adduce the following evidence to support her claim for damages:

(a) A *whatsapp* message from Didi, Ana's mechanic, of the cost of repairs for Ana's car.

(5 marks)

(b) HY clinic's medical bill for Ana's hospitalization and medical treatment that was signed by Dr. Hazir who is now pursuing his specialist training in London.

(5 marks)

(c) A photocopy of the receipt of payment of excess made to Takaful Suka Wang. The original copy of the receipt has been misplaced by Ana.

(5 marks)

**QUESTION 2 (15 Marks)**

(a) Azmi brings an action against Hussin for recovery of land situated in Kampong Kiarong of which Hussin is in possession. Hussin has been in possession of the said land for some 12 years and has the title deed to the said land. Azmi,

however alleges, that his father, Amin left the said land to him in his will and also asserts that the title deed in Hussin's possession is not genuine.

Discuss with reference the provisions of the Evidence Act, Chapter 108 and relevant cases what is the burden of proof upon Azmi and how is this burden to be discharge?

(6 marks)

- (b) Alex is accused for the murder of Chris and charged under section 302 Penal Code. DPP Emily is relying on the discovery of Alex's fingerprint found on the murder weapon left at the scene of the crime not far from where Chris' body was found to prove that Alex was the murderer.

Discuss with reference the provisions of the Evidence Act, Chapter 108 and relevant cases what is the burden of proof upon DPP Emily and how is this burden to be discharge?

(6 marks)

- (c) Explain the difference between burden of proof and standard of proof.

(3 marks)

### **QUESTION 3 (15 Marks)**

- (a) In the course of a trial, a witness while under examination cannot refresh his memory by right. It is within the discretion of the court whether to allow it or not. Discuss.

(7 marks)

(b) When does a party challenge the credibility of his own witness?

(8 marks)

**QUESTION 4 (15 Marks)**

(a) It was decided in the case of *Munusamy v PP* [1987] CLJ (Rep) 221 at page 223 as follows:

*“It is essential to appreciate the scope of section 114(g) of the Evidence Act 1950 lest it be carried to far outside its limit”*

Discuss the scope and applicability of section 114(g) Evidence Act, Chapter 108.

(10 marks)

(b) What would happen if the defence in a criminal trial refuses to offer evidence or refuses to call a particular witness?

(5 marks)

**QUESTION 5 (15 Marks)**

Raju, a dress maker, is charged for outraging the modesty of Nita, aged 10 (ten). Nita and her mother, Nora, came to Raju’s shop to make baju kurong for Hari Raya. When Raju was measuring Nita’s upper body, he groped Nita’s breasts. Nita was shocked but did not say anything as she did not know what had just happened and then Raju measured Nita’s lower body and inserted his right hand underneath Nita’s skirt and groped Nita’s left buttocks. Nita was shocked again but did not say anything. When Nita got in the car with her mother, Nita started crying and told her

mother what had happened. Nora was furious and confronted Raju immediately. Raju denied Nita's allegation but Nora believed her daughter and reported the matter to the police.

Advise DPP Adila on the matters she would have to satisfy the court before Nita's evidence can be accepted by the court.

### **QUESTION 6 (15 marks)**

Robbie is charged with trafficking of 550 grams of Cannabis. He was caught by the customs officer, Hanif, at the airport upon search of his bag. Robbie claims that he was given the bag by his friend called Joe at the Bangkok International Airport who asked him to pass the bag to Joe's friend in Brunei and that he has no knowledge of the contents of the bag. Robbie states that he is a victim and is innocent. Hanif confiscated Robbie's handphone and scrolled through Robbie's messages. Hanif discovered a message in the handphone to Robbie's wife, Yvonne, that read "*I am not paid enough by Joe to carry his goods. I should have demanded more payment*". The Deputy Public Prosecutor plans to tender the message from Robbie's handphone at the trial and call Roy, Robbie's legal adviser as the prosecution witness. Robbie had confided in Roy that Joe intends to deliver the bag to him and he was suspicious with the contents in the bag.

Advise Robbie on Robbie's claim of innocence and whether he has grounds to object to the Deputy Public Prosecutor's intention to tender the message from his handphone at the trial and to call Joe as the prosecution witness.

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