



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

Faculty of Shariah and Law
Semester II, 2022/2023 Academic Session

Final Examination Question Paper

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

Notes:

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

QUESTION 1 (15 Marks)

Jane and Harry were legally married in 2000 in Birmingham. In 2002 Harry left to join a revolutionary group in Bolivia, but told Jane he would return in a year. In fact, Jane did not hear from him again and in 2004 received a letter from the group leader saying Harry had been missing for six months following an expedition against counter-revolutionaries. Jane heard no more and in 2014 married Oliver, a man older than her, in Paris. In 2015 Jane gave birth to twins Barry and John and in 2016 to Margaret. In 2017 Jane and Oliver were both killed instantly in a car crash. Shortly before he was killed, Oliver told his sister Sarah, that Margaret could not be his child because he had not had intercourse with Jane for a year before her birth.

At the funeral, Alan, an old college friend of Jane and Harry's, who has been out of touch for years, told John that he saw Harry in a café in La Paz in 2004 but said Harry disappeared before he could speak to him. Jane's will said that if she died after Oliver her estate should be divided between her children and a charity for distressed Bolivian revolutionaries. Oliver's will left all his property to his 'legitimate children'. When Sarah, after the car crash, looked through old photographs in the attic she came across one showing Oliver and unknown woman.

On the back was noted 'Wedding day, 29 March 2010.'

a. Advise whether Margaret can claim under Oliver's will and whether all the children can succeed Jane's will.

(3 Marks)

b. What is the legal effect of the marriage between Jane and Harry in the year 2000?

(3 Marks)

c. What is the legal effect of the marriage between Jane and Oliver in the year 2014?

(3 Marks)

d. What is the legal effect of the 2004 sighting of Harry and is validity of marriage challenged by 2010 'wedding photograph' of Oliver and unknown woman?

(3 Marks)

e. 2016 Margaret born-presumption of legitimacy but does what Oliver told Sarah rebut presumption of Margaret's legitimacy?

(3 Marks)

QUESTION 2 (15 Marks)

Daphne is charged with causing criminal damage to the valuable rose bushes in the front garden of a house at 6 Churchill Road. She had been hawking garden waste bags door to door along with her daughter Judith, aged 12. Mr and Mrs Baldwin, the occupants of number 6, refused to buy from Daphne and slammed the door in her face. As Daphne left she allegedly destroyed the rose bushes in anger. Hector, the Baldwins' 20-year-old son, who has a mental age of ten, was looking out of the window. James, aged 17, who also saw the incident from the top of a bus as it passed along Churchill Road, is worried about testifying. He was bullied by Daphne's nephew at school and is afraid he might be attacked if he testifies against her. Daphne plead not guilty. The prosecution wishes to call Judith, James, and Hector as witnesses.

Advise on whether Judith, James, and Hector are competent and compellable witnesses and, if they do testify, how they may give evidence in court.

QUESTION 3 (15 Marks)

His Honour Judge Feeltham is presiding over a fictional trial for rape brought against David. Consider the following issues arising from the examination of prosecution witnesses:

a. The prosecution witness, Laura, who is also the alleged complainant, gives evidence that she was raped following a date with the defendant. The defence ask Laura during cross-examination whether she had previously dated the defendant before and she answers 'no'. The defence wish to call Laura's work colleague Tina TO PROVE THAT Laura had told her during a conversation about the rape that she had in fact dated the defendant twice before.

(4 Marks)

b. Halfway through her testimony Laura states that she cannot now remember what happens on the crucial night and refuses to give any details of the rape.

(4 Marks)

c. A medical expert is called on behalf of the prosecution and the expert asks to be able to refresh his memory from notes made following an examination of Laura.

(4 Marks)

d. The defence allege that there is insufficient evidence for the case to proceed against the defendant.

(3 Marks)

Discuss with reference to statute and decided case law how Judge Feltham is likely to deal with each of the above issues as they arise at trial.

QUESTION 4 (15 Marks)

In a trial of defendant, A for rape the trial judge is presented with the following evidence:

a. The evidence of complainant B that defendant A raped her. The complainant had initially made a complaint to police officers about defendant A and had then changed her mind and retracted her statement, she then changed her mind again and stuck with her original statement.

(4 Marks)

b. Defendant A, whilst on remand in prison, confessed to a prisoner that he had indeed raped B. The prisoner gives evidence at trial regarding the confession.

(4 Marks)

c. Witness C, who will give evidence that shortly after the rape complainant B ran into her shop sobbing and said, 'a man just raped me'.

(4 Marks)

d. Defendant A says in evidence that he was visiting his girlfriend at the time of the rape. However, his girlfriend has given evidence that she was not with him at the time of the rape and was in fact out of the country.

(3 Marks)

Discuss how the trial judge will deal with each of the above supporting evidence in his summing-up.

QUESTION 5 (15 Marks)

What is the primary evidence and the exception to the rule that documents must be proved by Primary Evidence?

(9 Marks)

Joko is a sole proprietor of a two-story shop house at Simpang 61 Kulap, Brunei. Joko leased the shop house to Mel Aduksy for a fixed term of 15years

and the lease agreement was duly signed by Joko and Mel Aduksy and thereafter registered at the land registry. Upon expiry of the said lease, Joko gave notice to Mel Aduksy to give up vacant possession of the said premises. Mel Aduksy, however contended that Joko had orally agreed with her to renew the lease for a further period of 20 years. Joko vehemently denies this. Joko intends to file a civil action against Mel Aduksy for vacant possession of the premises and seeks your advice on the possibility of the court admitting Mel Aduksy's oral evidence on the existence of any oral agreement for the renewal of the lease for 20 years.

(6 Marks)

QUESTION 6 (15 Marks)

“In their Lordships’ opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained...” (Lord Goddard CJ in the case of *Kuruma v R* (1955)2 WLR 223).

Analyze the above quotation with reference to the approach to the admissibility of improperly obtained evidence.

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