

Evidence March 2014

Examiner's Comments

It was pleasing that one candidate achieved a pass with distinction.

Candidates are reminded that they are expected to be able to explain the principles of the laws of evidence, with reference to the selected authorities listed in the outline. Problem questions also require the candidates to apply the principles. Most candidates showed a good basic understanding of the principles supported but too many were much weaker in applying the principles.

Question One raised issues about identification evidence, expert evidence, the use of admission evidence against a third party, character evidence introduced by a co-accused and tendency and coincidence evidence. This question was answered by the most candidates and the average mark awarded was 12.1.

Question 2 raised issues of hearsay and hearsay exceptions. While most candidates stated the hearsay rule with reference to relevant authorities, over half the candidates were unable to apply the rule correctly. The attempt to introduce evidence of suggestive remarks is not an attempt to introduce evidence of truth. The plaintiff's counsel is not trying to prove that she was keeping her husband up late. Many candidates also failed to notice that this was a civil case. This question was second in the number of attempts but the average mark was the lowest.

Question 3 raised issues of privilege and immunity. The issue of client legal privilege was identified and the dominant purpose test was stated but again very poorly applied. The issue of public interest immunity / matters of state was generally handled competently. Too many candidates made no reference to the protection for negotiations. The average mark for this question was not good.

Question 4 offered the candidates a choice of case notes. It was generally well handled although candidates are asked to note that their evaluation of the decision is sought. The average mark for this question was the highest.

Very few candidates attempted this question, the answers varied widely. The question stated the general principle but there are exceptions to it.