

## Examiners Comments – Evidence

### Examination September 2013

#### General Comments

All references below to legislation are to the *Evidence Act 1995*, unless otherwise stated.

As always, the discussion and application of appropriate statute and case law was more important than the conclusion reached, and if answers were argued properly (with supporting case law) the answers were still considered acceptable.

It is never advisable to quote large extracts of legislation or case law in an exam answer. It is much better to paraphrase the principle from the case into your own words and apply it to the facts of the exam question.

#### Question One

This question had several issues within it, all of which needed to be identified and discussed. The issues included hostile witnesses (s38) and hearsay (s59) and the exceptions to that rule (ss62, 66). The question was generally answered in a satisfactory manner, however the better answers identified that the evidence was hearsay and then went on to discuss the applications of the exceptions to the hearsay rule. Some students missed this step. Additionally, most students identified the issues and the applicable statute, but the better students also identified and applied relevant case law.

#### Question Two

This was answered, generally, in a satisfactory manner. The question had sub parts and raised issues of opinion evidence (ss 76, 78), the rule in *Browne v Dunn* (s46), credibility (ss103, 106 and ss64 and 45), and the burden of proof in criminal cases (ss 140 and 141). Most students identified the issues and the applicable statute, but the better students also identified and applied relevant case law.

#### Question Three

Most answers were satisfactory. The evidence given in the question raised several issues for discussion, including hearsay (s59 and *Subramaniam*), identification (ss133-116), CCTV footage (s48 and s51) opinion (s76, 78 and 79 and *Smith v The Queen* and *Dasreef Pty Ltd v Hawchar* [2011]) and admissions (sa81, 83 and 165).

Most students identified all the issues, but the discussion was limited, or they only identified the relevant legislation, not the case law that would have assisted their answers.

#### **Question Four**

Most answers were satisfactory, in that they gave a brief account of the facts of the case, the procedural and case history and then focused on the reasons given in the judgment(s) for the decision, referring to the relevant statutory provisions and other case law. Better answers then spent time evaluating the effect of the decision on the existing law and comparing and contrasting this decision with other existing case law, or case law handed down since this decision.

#### **Question Five**

This was a general question as to whether the new position is appropriate. Most answers described the new legislation, and the changes the new provisions would bring, but the better answers looked at other provisions that were relevant and examined them for inconsistencies with the new position (for example: ss 20, 90 and 139).

A significant number of answers re-wrote (in some cases large extracts of) the new legislation, or spent too much time summarising the new provisions, rather than addressing the other parts of the question, such as discussing the burden of proof or outlining the positions of the parties in a criminal case.