

## **WARNING**

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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 1 Special, 2018				

<b>LWZ316 - Evidence</b>	<b>DURATION</b>	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
<b>INSTRUCTIONS TO CANDIDATES</b>		
<p>This examination has two sections, Section A and Section B.                  Section A consists of one question, Question 1. It is a compulsory question. All students must answer this question.                  Section B consists of two questions, Question 2 and Question 3. Students must answer <b>ONLY</b> one of these questions. <b>DO NOT</b> answer both questions.                  This examination accounts for sixty (60) assessment marks. (60% of the unit assessment.)                  Each question has the marking value set out immediately following the question.                  Students must write the answers in the Answer Booklets provided. Please ensure that your name and student number have been written on the Answer Booklets.</p>		
<b>EXAM CONDITIONS</b>		
<p><b><u>You may begin writing from the commencement of the examination session.</u></b> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any non-programmable calculator is permitted		
Any handwritten notes are permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
<b>ADDITIONAL AUTHORISED MATERIALS</b>	<b>EXAMINATION MATERIALS TO BE SUPPLIED</b>	
Any printed material with the exception of CDU Library books	2 x 16 Page Book	

**THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.**

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LEFT BLANK.**

All questions should be answered in the Answer Booklets provided. Please ensure that your name and student number have been written on the Answer Booklets.

## Section A

**Compulsory Question – ALL students must answer this question**

**Total number of marks for this section: 30 marks**

**Suggested Time allocation for Section A: 1 hour**

**Question 1: Read these facts and please answer ALL of (a), (b) and (c).**

Jonathan is the lessee under a registered 5-year lease over a shop in the Swaying Palms Shopping Centre. The lease has three years left to run. The shopping centre is owned by Sally. Clause 10.1 of the lease provides:

Where the Lessor plans to construct additional buildings or extensions to existing buildings in the Swaying Palms Shopping Centre or otherwise deal with the Centre, upon the Lessor giving (3) three months notice to the Lessee, the Lessor may require the Lessee to surrender this Lease and vacate the said premises. Thereupon, the Lessee shall be offered a Lease in the Centre, or any comparable centre owned by the Lessor, for the balance of the term thereof upon the same terms and conditions as are herein contained.

Sally has sued Jonathan for breach of the terms of the lease, and in particular for failing to vacate the shop as required by clause 10.1 of the lease.

- (a) Sally alleges that on 3 February 2017, she met with Jonathan in Jonathan's shop. She handed to him a notice to surrender the lease pursuant to clause 10.1 and move to another nearby shopping centre owned by Sally. Jonathan denies that the meeting took place, and denies having received a notice to surrender the lease. Sally has a copy of the notice to surrender the lease in a file marked 'Jonathan – Swaying Palms Shopping Centre'.

**You are to assume that the *Evidence Act 1995 (Cth)* applies to this trial. With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss whether the copy of the notice to surrender the lease is admissible in the trial of the action. [5 marks]**

- (b) Jonathan intends to call Trevor, a former business associate of Sally's, who will testify that he (Trevor) spoke to Sally's Executive Assistant, Fred, on 8 June 2017. Trevor will testify that Fred overheard Sally on the phone to the manager of the Swaying Palms Shopping Centre, Phil. While Fred could not hear Phil's side of the conversation, he did hear Sally say, "Don't worry about Jonathan. We'll get him out even though I forgot to serve a notice on him." Tragically, Fred died in a car accident two days before the trial commenced.

**With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss whether Trevor's evidence is admissible. [15 marks]**

(c) Sally gives evidence at the trial. She is asked the following questions by Jonathan's counsel in cross-examination:

Q. Sally, you are a liar, a thief and a bounder, isn't that correct?

A. No.

Q. You were simply on a power trip and you thought you could push my client around because you are a woman and he is a man, isn't that correct?

A. No.

Q. You lied about serving notice on my client, you lied about the conversation you had with the manager of the Swaying Palms Shopping Centre, and you lied about meeting with my client on 3 February 2015, isn't that correct?

A. No. I'm a very truthful person and your accusations are hurtful.

Sally's counsel objects to this line of questioning.

**With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss the possible evidentiary bases for the objection. [10 marks]**

**Total marks for Question 1: 30 marks**

## Section B

Students must answer EITHER question 2 OR question 3. DO NOT answer both questions

Total number of marks for this section: 30 marks

Suggested Time allocation for Section B: 1 hour

**Question 2: Read these facts and please answer ALL of (a), (b) and (c).**

Alex's chosen occupation is a life in crime. Unfortunately for Alex, he is not a very good criminal because he invariably gets caught. His signature crime is armed robbery wearing a mask of an Australian Prime Minister. Since the 1970s, he has committed armed robberies using a Gough Whitlam mask (committed in 1976), Bob Hawke mask (committed in 1988) and John Howard mask (committed in 1999). On all three occasions he was apprehended, charged and convicted.

Finding himself once again on parole in July 2017, Alex decided to give it one more try. Having purchased a Malcolm Turnbull mask, Alex entered a 7-11 store armed with a shotgun. The store attendant initially laughed, but after seeing the shotgun, began to hand over the contents of the till. Alex, being focused on the attendant, failed to notice that there was another customer in the store. The customer attempted to hide behind a pallet of soft drink cans. In her haste, however, the customer knocked over a number of cans, sending them crashing to the floor. Alex was startled by the noise and accidentally discharged the shotgun. The blast hit the store attendant in the chest, killing him instantly. Alex immediately ran out of the shop, pulling off the mask as he left.

Alex is later arrested and charged with armed robbery and murder. His appearance had not changed between the time of the robbery and the date of the trial. His trial takes place before a judge sitting with a jury.

- (a) The only image of Alex captured by the closed-circuit television camera is a blurry side shot of his face as he ran out of the shop. Three members of Alex's prison cricket team recognise Alex as the person in the photo. The customer who was in the 7-11 store also is shown the photo but is unable to tell if the person in the photo is the same person who held up the store.

**You are to assume that the *Evidence Act 1995 (Cth)* applies to this trial. With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss whether the photo and the evidence of the three members of Alex's prison cricket team is admissible in the prosecution's case. [10 marks]**

- (b) The prosecution gives notice in the prescribed form of its intention to adduce into evidence Alex's prior armed robbery convictions, and the facts giving rise to each of the prior armed robberies.

**With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss whether this evidence is admissible. [15 marks]**

- (c) To test Alex's assertion of accidental firing of the shotgun, the trial judge directs the jury that during deliberations in the jury room they can carry out a test on the unloaded

shotgun to see how easily it may be fired. The judge warns the jury, however, that it is not to draw any inferences from what it sees, hears or otherwise notices during the test.

**With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss whether the trial judge's direction and warning to the jury was in accordance with the provisions of the Act. [5 marks].**

**Total marks for question 2: 30 marks**

**Question 3: Read these facts and please answer ALL of (a), (b) and (c).**

John is charged with one count of sexual assault against his daughter, Zara. At the time of the alleged assault Zara was 10 years old. When Zara was 18 years old and had left the family home, she told her flatmate, Chin, that the assault occurred. This was the first time Zara spoke of the assault to anyone. John denies assaulting Zara, and in the criminal trial has entered a plea of not guilty.

According to Zara, the assault occurred one afternoon after she had returned home from school. Both her father, John, and her mother, Jane, were unemployed at the time and both John and Jane were in the house. Zara alleges that when she got home she went straight to her bedroom to play on her computer. John followed her into the bedroom, threw her on the bed and sexually assaulted her. Zara states that while she was being assaulted, Jane came into the room and said "stop it you two, that's enough", and then left the room. John then got off Zara and left the room.

At trial, the prosecution indicates that it is going to call Jane to give evidence against John. Jane objects to giving evidence. John's counsel objects to the admission of the Jane's alleged statement when she came into the room.

**a. With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss the possible evidentiary bases for Jane's objection to giving evidence, and John's counsel's objection to the admissibility of Jane's statement. [15 marks]**

To explain Zara's delay in complaining about the assault, the prosecution calls a child psychologist, Bertha, to give evidence regarding typical patterns of behaviour and responses of a child to abuse. The defence objects to this evidence and a voir dire in the absence of the jury is held. In upholding the objection and ruling that the evidence of Bertha is not admissible, the trial judge states:

"Evidence such as that of the child psychologist Bertha does not assist this court or the jury in a determination of why Zara failed to tell anyone about the assault for 8 years. The behaviour of children is a matter that is within the ordinary experience of the jury, and the jury will be able to assess Zara's evidence without any assistance from a child psychologist. I therefore uphold the objection and Bertha's evidence will not be admitted.

**b. With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss the relevant evidentiary issues that arise from the trial judge's ruling. [5 marks]**

In her summing up to the jury at the conclusion of the trial, the trial judge stated:

"The fallibility of human recollection and the effect of imagination, emotion, prejudice and suggestion on the capacity to remember are well documented. The longer the period between

an event and its recall the greater the margin for error. Recollection of events which occurred in childhood is particularly susceptible to error and is also subject to the possibility that it may not be genuine. As the evidence of Zara could not be tested adequately after the passage of time, it would be dangerous to convict John on that evidence alone unless you members of the jury, scrutinising the evidence with great care, are satisfied of its truth and accuracy.”

- c. **With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss the relevant evidentiary issues that arise from the judge’s summation. [10 marks]**

**Total marks for question 3: 30 marks**

**END OF EXAMINATION**