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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 1, 2019				

LWZ316 - Evidence	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<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 ONLY one of these questions. DO NOT 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>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> 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)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
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.**

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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) and (b).

On 1 January this year Alfie was drinking with his friend Boris at a beach in the northern suburbs of Darwin, Northern Territory. Both Alfie and Boris were from Estonia in Eastern Europe. They, together with Alfie's de facto partner Heidi, were in the Northern Territory on a working holiday. Alfie and Boris's knowledge of the English language was very limited. While they knew some basic words in English, their understanding of the language was rudimentary. While in Australia they have relied heavily on Heidi, who was fluent in both Estonian and English, to translate for them.

By early evening, both Alfie and Boris were intoxicated. Heidi, having had to work on 1 January, did not join Alfie and Boris on the beach. When Boris made a disparaging remark about Alfie's partner, Heidi, Alfie struck Boris in the face with a vodka bottle from which both had been drinking. The blow killed Boris instantly. Carly, who was walking her dog on the beach at the time of the fight, saw Alfie hit Boris and called 000. Doris, a constable with the NT Police, attended within minutes, observed Boris laying in a pool of blood, and said to Alfie: "Well, what happened here then?". In response, Alfie said: "He bad man. I hit". Doris then handcuffed Alfie and drove him to the police station for processing.

The next day, Alfie was interviewed by Detective Enid Jones of the NT Police. At the commencement of the Electronic Record of Interview, Enid read the caution to Alfie and the following discussion took place:

Enid: Alfie, please tell me what you think the caution means.

Alfie: I want you call Heidi.

Enid: First, you tell me what you understand the caution I just read to you means.

Alfie: I no understand.

Enid: Do you understand the caution?

Alfie: Yes.

Enid: Why did you kill Boris?

Alfie: I no understand.

Enid: You hit Boris with a bottle, didn't you?

Alfie: Yes.

Enid then terminated the interview.

Alfie has pled 'not guilty'. At Alfie's trial for the murder of Boris in the Supreme Court of the Northern Territory, Alfie's defence counsel objects to the admission into evidence of both Alfie's statement to Doris that "He bad man. I hit.", and Alfie's answer 'yes' to Enid's question: "You hit Boris with a bottle, didn't you?".

(a) With reference to the *Evidence (National Uniform Legislation) Act 2011 (NT)*, and the relevant case law, discuss the possible evidentiary bases for the objections. [25 marks]

Carly is called to give evidence for the prosecution in its case against Alfie. The prosecutor asks Carly the following questions:

Prosecutor: Your full name is Carly Jane Simmonds?

Carly: Yes.

Prosecutor: What were you doing about 7 pm on 1 January this year?

Carly: I was walking my dog on the beach.

Prosecutor: While you were walking your dog you observed two men having an argument?

Carly: Yes, I did.

Prosecutor: You were about 15 metres away from the men when you saw the fight?

Carly: Yes, that's correct.

Prosecutor: And you saw the defendant, Alfie, hit Boris with a bottle?

Carly: Yes.

Defence Counsel: Your Honour, I object to the last three questions my learned friend has asked.

(b) With reference to the *Evidence (National Uniform Legislation) Act 2011 (NT)*, and the relevant case law, discuss the possible evidentiary bases for Defence Counsel's objection. [5 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).

Albert and Beverly have been married for 18 years. They have two sons, Carl now aged 16 years and David aged 4 years.

In February of 2009, Albert started using the drug, methamphetamine (commonly referred to as 'ice') after he lost his job as a house painter. When under the influence of methamphetamine, Albert became violent, particularly towards his son, Carl who was then 6 years old. On one occasion Albert, after using methamphetamine, beat Carl severely, resulting in Carl's hospitalisation. Albert was arrested, tried and convicted of assault causing harm and was jailed for 4 years.

Upon his release from jail, Albert appeared to turn his life around. He attended counselling and stopped using methamphetamine. He also secured a job as a house painter in the town of Katherine, Northern Territory. In 2015, David was born.

Due to the downturn in the Northern Territory economy in 2018, Albert again lost his job as a house painter. To deal with his depression, he once again started using methamphetamine. In April 2019 he came home after taking methamphetamine and got into a heated argument with Beverly. When David started to cry, Albert locked David in the laundry and proceeded to beat Beverly. Carl, who arrived home to see the beating in progress, called the police. Albert was charged with assault causing harm.

After Albert was arrested and taken to the police station, Carl gave a statement to police. The statement was taken by Constable Singh of the NT Police. In his statement, Carl stated that he arrived home to find Albert hitting Beverly. He then called the police. Once Albert was subdued and arrested, Carl found David locked in the laundry.

At Albert's trial before a judge and jury in the Northern Territory Supreme Court, the prosecution intends to call Carl, David and Beverly. Beverly and David have agreed to give evidence for the prosecution, but Carl has objected to giving evidence. Carl told the prosecutor that, while him and his father have had problems in the past, he still loves Albert and knows that if he gives evidence against Albert his relationship with Albert will suffer. Further, Carl states that if he is called to give evidence as a witness for the prosecution he will say that when he arrived home on the night of the assault on Beverly, he found an intruder in the house who was hitting Beverly. He initially thought the assailant was Albert, and said as much when he called the police, but after reflecting on the event he realised that it was an intruder, not Albert, who was hitting Beverly.

- (a) With reference to the *Evidence (National Uniform Legislation) Act 2011 (NT)*, and the relevant case law, discuss the possible evidentiary basis for Carl's objection to giving evidence. Further, discuss whether, on the facts as set out above, the objection of Carl to giving evidence as a witness for the prosecution will be successful. [10 marks]
- (b) If the trial judge rules that Carl must give evidence as a witness for the prosecution, and Carl gives the evidence he indicated to the prosecutor that he would give if called, how can the prosecution attempt to have admitted into evidence Carl's statement to police given on the night of the assault on Beverly? Discuss with reference to the *Evidence (National Uniform Legislation) Act 2011 (NT)*, and the relevant case law. [15 marks]

At the trial the prosecution called David to give evidence. The defence counsel objected on the basis that David was too young to give evidence. The trial judge agreed and held that children under the age of 10 years lack the capacity to give either sworn or unsworn evidence.

- (c) Was the trial judge correct to conclude that David lacked the capacity to give either sworn or unsworn evidence? Discuss with reference to the *Evidence (National Uniform Legislation) Act 2011 (NT)*, and the relevant case law. [5 marks]

Total marks for question 2: 30 marks

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

In June 2018, Agnes was riding her bicycle along the Todd River bike path in Alice Springs, Northern Territory. Agnes was blissfully unaware that the Alice Springs Town Council (the 'Council') was carrying out repairs on the bike path until her front wheel fell into a hole and Agnes sailed over the handlebars. It is not in dispute that the workers employed by the Council had left the site for a lunch break and had not erected any barriers to warn those using the bike path of the hole.

Agnes hit the ground hard and sustained a broken wrist, a concussion, and severe bruising. As a consequence of the concussion, Agnes still finds it difficult to concentrate for long periods, and she refuses to ride her bike again; an activity she loved before the accident.

Agnes has sued the Council in negligence. At the trial of the action in the Supreme Court of the Northern Territory before a judge sitting without a jury, Agnes intends to call her treating doctor, Bethany, to give evidence for the Plaintiff (Agnes). Bethany is an Orthopaedic Surgeon with 20 years' experience in the treatment of injuries caused by a fall. Bethany has prepared a report which sets out in detail Agnes's medical history, including Agnes's description of the accident and resulting injuries. It also sets out her conclusions regarding the extent of Agnes's injuries arising from the fall, her prognosis for recovery of her broken wrist, and her conclusion that it is unlikely that Agnes's ability to concentrate will ever return to pre-accident capacity.

Agnes gets very nervous when she has to speak in front of a room full of people. Agnes has decided, therefore, that she will not give evidence at the trial. Rather, as proof of the facts giving rise to the accident and the extent of her injuries, Agnes intends to rely on her description of the accident and the resulting injuries contained in Bethany's report.

- (a) With reference to the *Evidence (National Uniform Legislation) Act 2011 (NT)*, and the relevant case law, discuss on what basis Agnes's description of the accident and her resulting injuries can be admitted into evidence as proof of the fact that the accident happened and that she suffered the injuries she says she suffered. [15 marks]**
- (b) Discuss whether there are any evidentiary bases on which the Council can rely to argue that the evidence referred to in (a) above should not be admitted. [10 marks]**
- (c) Are there any inferences that can be drawn by the trial judge based on the facts as set out in the above scenario? [5 marks]**

Total marks for question 3: 30 marks

END OF EXAMINATION