

## **WARNING**

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2017

<b>FINAL EXAMINATION</b>	<b>DURATION</b>				
<b>LWZ316 – Evidence</b>	<table border="1"> <tr> <td>Reading Time:</td> <td><b>20</b> minutes</td> </tr> <tr> <td>Writing Time:</td> <td><b>120</b> minutes</td> </tr> </table>	Reading Time:	<b>20</b> minutes	Writing Time:	<b>120</b> minutes
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**INSTRUCTIONS TO CANDIDATES**

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.

**EXAM CONDITIONS**

**You may begin writing from the commencement of the examination session.** The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is 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 20 Page Book 2 x Scrap Paper

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

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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) and (b).

Cassandra's garden was her pride and joy. In November 2016, Cassandra's garden was featured on *Gardening Australia*. Unfortunately, such notoriety engenders envy, and no one was more envious of Cassandra's garden than her neighbour, Barry. The prosecution alleges that, on 1 December 2016, Barry broke into Cassandra's garden by scaling her security fence. It also is alleged that Barry destroyed the garden through the very liberal application of a scythe (which is an agricultural hand tool for cutting grass or crops). Finally, it is alleged that Cassandra saw Barry destroying her garden. When Cassandra tried to stop him from causing further damage, Barry slashed her across the throat with the scythe, killing Cassandra instantly.

Cassandra's best friend, Dorothy, gave a statement to the police on the day of Cassandra's murder. According to Dorothy, she received a telephone call from Dorothy on the day of the murder. Cassandra said to Dorothy,

"I just saw my neighbour, Barry, climbing over my fence with a scythe in his hand. Please call the police immediately. I think he intends to destroy my garden. I'm going out there and confront him."

Dorothy immediately called the police and told the officer on duty, Elinor, the following: "You need to get over to Cassandra's house right away. Her neighbour Barry has broken into her garden and is going to destroy it with a scythe." As the illegal destruction of a garden was not seen as a high priority, it took 40 minutes for a police car to attend at Cassandra's house. By this time Barry had disappeared, leaving a destroyed garden and a dead Cassandra in his wake.

Barry was subsequently charged with Cassandra's murder. He has pled not guilty and is being tried before a judge and jury.

On the morning of the trial the prosecutor gives Barry's lawyer notice in writing that she intends to adduce evidence from Dorothy regarding the phone calls Dorothy had with Cassandra and with Elinor.

Later that morning, Dorothy is called by the prosecutor to give evidence. The first question the prosecutor asks Dorothy is as follows: "On 1 December 2016, you had telephone conversations with Cassandra and with Elinor, what was said in those conversations?". Before Dorothy can respond, Barry's lawyer objects to this question.

**(a) 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 the possible evidentiary bases for the objection. [20 marks]**

The prosecutor also intends to call a police officer, Alistair, who investigated Cassandra's murder. Alistair will give evidence that he attended at Barry's house on 5 December 2016 to question Barry about the events of 1 December 2016. When Alistair arrived, Barry was in his backyard working in his garden. When Alistair passed the side of the house he noticed a scythe which appeared to be stained with a reddish brown substance. He then went up to Barry and

said, “Is the scythe at the side of your house the one you used to kill Cassandra”? Barry replied, “I didn’t intend to kill her, just to take her down a peg”. Alistair then arrested Barry for the murder of Cassandra.

At the trial, Barry’s lawyer objects to the admission of Alistair’s evidence of what Barry said to Alistair immediately before Barry was arrested.

**(b) With reference to the *Evidence Act 1995 (Cth)*, and the relevant case law, discuss the possible evidentiary bases for the objection and whether such objection will be upheld. [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) and (b).**

Sam Spink is on a path to higher spiritual enlightenment. He meditates daily and is an avid reader of books to be found in the 'New Age' section of his local library. Tony also is an avid reader, but his interests relate more to the history of warfare than spiritual enlightenment. Like Sam, Tony also frequents the local library.

On 7 January this year, both Sam and Tony were reading in the library. Sam became increasingly agitated when Tony took a call on his mobile. Such a flagrant disregard for library policy (which prohibited the use of mobile phones within the library) was exacerbated when Tony put his mobile phone on speaker and proceeded to talk loudly to the caller. Sam removed a copy of the *Complete Works of William Shakespeare* from an adjacent shelf and hit Tony over the head, causing Tony to fall and cut his head on a book shelf. Police were called and Sam was charged with assault.

Sam admits to hitting Tony with the book, but maintains that he was not in control of his actions at the time. At the criminal trial of Sam before a judge sitting without a jury, Sam's lawyer calls Sam's work colleague, Melinda, to give evidence in the defendant's case. In the course of the examination-in-chief, Sam's lawyer asks Melinda the following questions:

Q1: What is your name?

A: Melinda Melon.

Q2: Are you employed?

A: Yes.

Q3: Where do you work?

A: At a clothing shop called 'Snazzy Duds'.

Q4: Who works at the shop with you?

A: Sam Spink.

Q5: What is Sam like with customers?

A: Very good. In fact, he's a very gentle man.

Q6: So you've never seen him lose his temper with a customer?

A: Never.

In the cross-examination of Melinda, the prosecutor asks the following questions:

Q1: Did you know that Sam was convicted of physically assaulting his flatmate in 2010?

A: No.

Q2: Did you know that Sam was convicted of supplying cocaine in 2005?

A: No.

**(a) 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 all of the relevant evidentiary issues that arise from the above facts. [20 marks].**

Sam's lawyer also calls Willow Wallace as an expert witness. Willow has an Advanced Certificate in Chakra and Aura Healing from the School of Life Studies in the United Kingdom, and a Diploma of Energetic Healing from the Nature Care College in NSW. Speaking generally, a chakra can be described as an energy point or node in the spiritual body through which the body's energy flows. An aura can be described as a field of subtle, luminous energy that surrounds a person or object.

Willow has worked as chakra and aura healer for 20 years. At the request of Sam's lawyer, Sam attended a consultation with Willow the day after Sam was charged with assault.

At the trial, and after questioning Willow about her qualifications, experience and consultation with Sam, Sam's lawyer asks the following question:

Q1: What did you conclude from your consultation with Sam?

A: I concluded that, on the day of the assault on Tony, Sam's chakras were closed, resulting in severe constraints on the energy flows throughout his body. His aura also was very dark, which was consistent with the closure of his chakras. In my experience, a person with severe chakra shut-down will act in a way that is completely out of character, and will likely have no control over his or her actions. I concluded that Sam was in a chakra shut-down state at the time of his altercation with Tony. This shut-down was brought about by a severe psychic disturbance; namely, the microwaves emitting from Tony's mobile phone when the speaker function was engaged.

**(b) The prosecutor objects to Willow's evidence. 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 the possible evidentiary bases for the objection and whether such objection will be upheld. [10 marks]**

**Total marks for Question 2: 30 marks**

### Question 3

Alice has been charged with the theft of a Rolex watch worth \$100,000.00. She is being tried by a judge sitting with a jury. The prosecution's case is that Alice stole the watch on 15 November 2016. The only witness to the theft was a store employee, Bart.

Immediately after the theft, Bart was questioned at the store by Constable Chow. Bart gave a statement to the police which stated:

A woman asked to see a Rolex watch we had on display under protective glass. She did not tell me her name. After I opened the cabinet I received a call on my mobile phone. I had to take it as it was from my partner who is ill and I am very worried about her. When I turned my back to talk on the phone, I noticed in the mirror that the woman had reached into the cabinet and taken the watch. She then left the store. I immediately sounded the alarm and called the police.

- (a) The police believe that Bart may have been involved in the theft of the watch. The police engage in an undercover police operation, the objective of which is to have an undercover police officer befriend Bart and elicit any relevant information. The undercover police officer accomplishes this task, and during a night out at the pub the police officer asks Bart whether he's ever done anything he regrets. Bart says to the police officer:

"A few months ago I met a woman named Alice who talked me into helping her steal a watch from where I worked. She said my employer would just claim it on the insurance, but it has gone much further than that. I was such a fool."

Bart is charged with being an accessory to the theft of the Rolex watch. At the trial the prosecution calls the undercover police officer to give evidence.

**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 Bart's statement to the undercover police officer is admissible in the prosecution's case. [10 marks].**

- (b) Bart did not give evidence. In the trial judge's summation to the jury in Bart's trial, the trial judge says the following:

'Members of the jury, Bart did not give evidence in this case, and you should draw no conclusions from this. In our system of criminal justice there is no onus on the defendant to prove anything. You are aware from the evidence that has been presented by the prosecution, however, that there were only two people in the store at the time of the theft; Bart and Alice. It perhaps goes without saying that, in the absence of any evidence adduced on behalf of the defendant – either from Bart himself or from other witnesses for the defence – you can accept more easily as fact the version of events put forward by the prosecution. This version, if accepted by you, will result in a verdict of guilty.'

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

- (c) Alice is being tried separately from Bart. One week before the trial against Alice starts, Bart tells the prosecutor that he was mistaken when he identified Alice as the thief. If called to give evidence, Bart tells the prosecutor that he will say that when he turned back to the counter after taking the telephone call, Alice had left the store and there was a man he could not identify running out of the store with the Rolex watch.

**The prosecution wants to adduce into evidence in Alice's trial the statement Bart gave to the police on the day of the theft. With reference to the *Evidence Act 1995 (Cth)*, and the**

relevant case law, discuss whether Bart's statement to Constable Chow is admissible.  
[15 marks]

Total marks for question 3: 30 marks

**END OF EXAMINATION**