

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LAW OF EVIDENCE-LLB206

TIME: 3 HOURS

11 JUNE 2018

INSTRUCTIONS

1. Answer **ALL** questions from Section A and **ANY TWO** questions from Section B.
2. Marks allocated to questions are indicated in brackets.
3. This question paper is worth 100 marks.
4. Start each question on a new page.
5. **Material allowed in the exam**
 - i. Civil Evidence Act [Chapter 8:01];
 - ii. Criminal Procedure and Evidence Act [Chapter 9:07];
 - iii. Constitution of Zimbabwe, 2013.

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

SECTION A

QUESTION 1

Hilder a six year old girl, and James a twenty-two year old boy are neighbours. On 7 January 2018, Hilder went on to play with James' four-year-old nephew Tatenda and a seven year old Tendai outside the gate at the house where James was residing. Hilder alleged that James dragged her into a cabin within the compound of his premises, placed her on a bed in the cabin, removed her pants and started doing "shameful things on her." He threatened to assault her if she made a report to her mother.

In fear of being assaulted should she make a report of the incident to her mother, Hilder told her friend, Tendai as they were about to leave home for school that James had done "shameful things on her" and that she had been threatened by him not to make a report to her mother. The following day, when Hilder and Tendai were playing, James took away Tendai's ball and would not return it. Enraged by James' refusal to return her ball, Tendai, in a fit of retaliation, went and informed Hilder's mother about the Hilder's report to her. Upon receiving the report, Hilder's mother instructed her younger sister, Tabeth, to enquire from Hilder as to the veracity of the statement by Tendai.

Acting upon a feedback from Tabeth, Hilder's mother requested Rebecca, Hilder's aunt, to examine her physically. Rebecca complied with that request and advised that Hilder be taken to a clinic for the nurses to examine and determine what had happened to her. On 18 January 2018, Hilder was taken to the clinic for examination. Hilder was examined and the sister-in-charge reported that, in her opinion, she had been raped. The medical report from the clinic was tendered as exhibit. On 25 January 2018, a report was made to the police and James was arrested and charged with rape.

James' defence was a complete denial of the charge levelled against him.

Discuss the evidentiary issues arising from the above facts and the approach which the Court is likely to adopt. Your answer should include a detailed critique of the cautionary rules in so far as they relate to complaints in sexual cases in general and the evidence of young children in particular. **[25 marks]**

QUESTION 2

The police raided Trouble's house during the course of which they carried out a search with a warrant. Subsequently, Trouble was arrested and charged with unlawful possession of marijuana, a prohibited drug. The Police also seized during the course of the search a notebook in which Trouble kept a daily record of his transactions on the drug market. After his arrest, Trouble was taken to a Police Station. He immediately asked to be allowed to contact Smart, his lawyer, but the request was turned down. Over the next three days of sustained questioning during which Trouble was allowed very little sleep or refreshments, he made a confession to the Police. As a result of this confession, the Police searched a lock up garage rented by Trouble where they discovered further quantities of marijuana. At Trouble's trial his Legal Counsel argues that the confession and everything else found as a consequence of the confession should be excluded from the evidence because they were secured in "an oppressive and burdensome manner."

Advise Trouble on the admissibility of the confiscated marijuana.

[25 marks]

SECTION B

Answer Two Questions

QUESTION 3

With the aid of decided cases and relevant statutory provisions, explain the concept of privilege as it applies to the law of evidence and the rationale underpinning it.

[25 marks]

QUESTION 4

Explain the approach of courts in Zimbabwe towards the evidence of;

- i. single witnesses [6 marks]
- ii. accomplices [6marks]
- iii. Explain the term "refreshment of memory" and the conditions that must be fulfilled for a witness to refresh memory in court? (13 marks)

QUESTION 5

In *Canaan Sodindo Banana v The State SC 41/2000*, the then Chief Justice Antony Gubbay made important pronouncements in relation to the approach of the Zimbabwean courts towards a number of evidentiary issues raised in that case.

Explain and critically discuss the approach of our courts (as per the judgment) in relation to similar fact evidence. [25 marks]

QUESTION 6

"Dying declarations are only admissible in cases relating to murder or culpable homicide."

In light of this statement, discuss the essential requirements for the admission of dying declarations and evaluate whether the same concept is still relevant to modern law of evidence.

[25 marks]

[END OF EXAMINATION]