

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LAW OF EVIDENCE– LLB206

18 NOV 2019

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

1. Answer **all questions** .
2. All questions are compulsory.

Materials allowed in exam

Constitution of Zimbabwe, 2013.

INFORMATION FOR CANDIDATES

1. Candidates may bring into the Examination Room the Prescribed Acts and Rules of Court which should not be annotated.
2. Cellphones are not allowed into the examination room.
3. Begin each answer to a full question on a fresh page.

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

Question 1

Christie, Business Law in Zimbabwe at page 65 states that::

“It is equally obvious that it (parole evidence rule) contains seeds of injustice because it excludes evidence which might reveal the true agreement between the parties. To minimise this danger the application of the rule is subject to a number of limitations.”

Required

Analyse and discuss the Supreme Court’s approach in the case of *Maparanyanga v The Sheriff of the High Court and Ors SC 132/02* with specific reference of the parole evidence rule.

[20 marks]

Question 2

(a) Explain and discuss the judicial approach to the

- (i) Evidence of accomplices
- (ii) Evidence of young children

(10)

(b) Discuss any four forms of privilege recognised under Zimbabwean law and critically evaluate whether or not the existence of such privilege does not in fact militate against the proper administration of justice.

(10)

[20 marks]

Question 3

(a) The police raided Drugseller’s house during the course of which they carried out a search with a warrant. Subsequently, Drugseller was arrested and charged with unlawful possession of mandrax tablets, a prohibited drug. The police also seized during the course of the search a notebook in which Drugseller kept daily record of his transactions on the drug market. After his arrest, Drugseller was taken to a Police Station. He immediately asked to be allowed to contact Smartone, his lawyer, but his request was turned down. Over the

next three days of sustained questioning during which Drugseller 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 Drugseller where they discovered further quantities of mandrax. At Drugseller'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."

Required

What attitude should the court take?

(10)

- (b) In a personal injury action one charge of negligence against the defendant is that he was driving a car with defective breaks. Defendant testifies that on the day before the accident he took his car into a garage to have various matters checked including brakes. He testified that at the end of the day he called the service manager of the garage and the manager said:-

"Everything is okay. Breaks, lights, horn, everything."

Suppose the service manager had also written a signed note which he had delivered to the defendant. The note said

"your car is ready. The breaks are okay"

Required

Consider the admissibility of both the defendant's testimony and the service manager's note.

(10)

[20 marks]

Question 4

On her way from work, Makaanaka took a short cut through a piece of waste ground when she was suddenly confronted by a man who assaulted her with the obvious

intention of rape. In the process she was forced to the ground and dropped her bag which opened and allowed all the contents thereof to be strewn around the area. The man grabbed at the purse and fled away.

A few moments later, Taurai, who was cycling along the path hears a cry for help and found Makanaka in a distressed and dishevelled condition. Tearfully she told him what had happened and he took her to the nearest house where she was attended to by a Mrs Batsirai who, on Hearing the story, telephoned the police. Before they arrived Taurai left and Mrs Batsirai decided to take Makanaka to her home.

Some days later the police take statements from both Mrs Batsirai and Taurai. He informed them that Makanaka had told him that when he attacked her the man had said, "You can tell all your fancy friends that Dhidhidhi did this to you."

Mrs Mambure, Makanaka's mother, took charge of her daughter after she arrived home and questioned her as to the events that had taken place. Makanaka told her that the man had been attempting to rape her when he stole the money which was in her purse and which contained over \$ 1000 000.00. A policewoman called at the house the following day after Makanaka had gone to work and a statement was taken from Mrs Mambure who told the policewoman that her daughter had been raped.

In the meantime Dhidhidhi, who was unemployed and desperate for money, had persuaded a friend, Jere, to provide him with an alibi in exchange for a share of the money.

On his arrival home Dhidhidhi, who was married to Svodai by a registered African marriage and to Nakidzo by an unregistered customary union was berated by Svodai for the damage to his clothing and in the course of a domestic argument let out that he had been involved in an accident involving a girl. He alleged that it was all a mistake that the girl had lured him onto the waste ground with an excuse and when he went to her assistance she said that she would accuse him of rape unless he gave her money. When he had refused she had torn his clothing.

Svodai was suspicious of her husband's action and confided in Nakidzo who, being jealous of Svodai, decided to inform the police, anonymously.

As a result of the phone call a policeman arrives and arrests Dhidhidhi who protests his innocence. He is placed in the cells overnight and is questioned the following morning. A police sergeant tells him that he is to be charged with rape and robbery but that if he admits the robbery he would get off with a lighter sentence. "It might be suspended since you are a first offender." Dhidhidhi is then taken by a police detail to the scene of the accident and is asked to show where the assault took place. He Denies any assault whereupon he is, himself assaulted by one of the policeman. Dhidhidhi indicates the area where certain items are found which Makanaka identified as her possessions.

Dhidhidhi is charged with attempted rape and robbery and at the trial Makanaka gives evidence of her assault stating that she is certain that Dhidhidhi's intention was to rape her until he saw the money. Mrs Mambure gives evidence of the information that Makanaka had provided as answer to her questions.

Taurai repeats what Makanaka had told him when he went to her assistance and Mrs Batsirai expresses her opinion regarding the state of Makanaka's condition on arrival at her house when she assisted her.

Svodai and Nakidzo are called to give evidence for the defence but Svodai argues that she is not allowed to give evidence against her husband, so refuses to answer any questions put to her. Nakidzo is called by the prosecutor to tell the court what Svodai had told her of the incident. She said that she did not believe Svodai and would only state what had been said to her.

Jere is then called as a defence witness. After being told that he was regarded as an accomplice to him provided that he is not charged with any involvement himself.

Required

Discuss the problems of evidence arising from this situation.

[20 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 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 judgement) in relation to the following evidentiary matters.

- (a) The single witness situations (10)
- (b) Similar fact evidence (10)

[20 marks]

TOTAL MARKS [100]

END OF EXAMINATION PAPER .