SUBJECT, COURSE AND CODE: EVIDENCE (LAWS3EV)

DURATION: 2 HOURS + 20 minutes reading time  TOTAL MARKS: 120

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STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY

PLEASE NOTE: This paper consists of Seventeen (17) pages. Please ensure that you have them all. Answer all questions in both Part A and Part B.

INSTRUCTIONS:

PART A - MULTIPLE CHOICE –
♦ Use the MCQ answer sheet to record your answers.
♦ Note: Some questions require you to identify the correct/true statement, and some require you to identify the incorrect/false statement.
♦ No negative marking will be used.
♦ Each question is worth 1 mark (total = 50 marks)
PART A – Multiple choice [50 marks]

SECTION 1
1. Indicate which of the following statements is true.
   a) The burden of proof shifts from party to party, as evidence is led in the trial.
   b) The accused is required to prove that s/he is not criminally responsible, beyond a reasonable doubt.
   c) The evidentiary burden rests on a party when it can be said that a reasonable person/court would find against that party, at that point in time.
   d) The accused’s defence in a murder trial is self-defence. The prosecution must prove he did not act in self-defence, beyond all possible doubt.

2. Indicate which of the following statements is true
   a) Absolution from the instance may be applied for in a criminal case.
   b) Generally, a judge should reject the evidence of a witness who appears credible, if her version is highly improbable.
   c) A court may never take into account its previous experience of a witness when making a favourable credibility finding as regards that witness.
   d) An adverse inference must be drawn against a witness who sits in court before giving evidence.

3. Indicate which of the following statements is true
   a) In a civil trial, an inference sought to be drawn from circumstantial evidence must be consistent with the proved facts, and must be the only reasonable inference that may be drawn.
   b) The cautionary rule applies in respect of complainants in sexual assault cases if they are children and/or single witnesses.
   c) The cautionary rule does not apply to circumstantial identification evidence, because it is given by expert witnesses (e.g.: a fingerprint expert)
   d) Corroborative evidence will always be required by the judge before accepting as true evidence to which a cautionary rule applies.

4. Indicate which of the following statements is true
   a) Where the accused’s conduct falls within a statutory definition of a crime, the accused will always bear the onus of proving his innocence.
   b) The rule prohibiting self-corroboration is confined to express or implied corroboration.
   c) The rule prohibiting self-corroboration is confined to direct rather than circumstantial evidence.
d) Real evidence in the form of a torn pair of panties is not evidence which corroborates an allegation of rape.

5. Indicate which of the following statements is true
   a) The presumption of innocence in our criminal justice system is classified as an irrebuttable presumption of law.
   b) The presumption of innocence in our law means that the prosecution must prove every element of the offence, beyond a reasonable doubt, and the accused must prove any defence he relies upon.
   c) The presumption of innocence was first introduced into SA law by the Bill of Rights contained in the current constitution of SA.
   d) The presumption of innocence in our law means that both the legal burden, and the evidentiary burden remain on the state in all criminal cases.

6. Indicate which of the following statements is false
   a) When assessing circumstantial evidence the court must consider each factor separately and must disregard any factor which is consistent with the innocence of the accused.
   b) An accused can be convicted on the basis of circumstantial evidence alone.
   c) Corroboration is not required in order for a judge to make a finding that a fact is true except in the case of certain confessions.
   d) When assessing circumstantial evidence in a criminal case, the court must refuse to draw an inference from it if there is another reasonably possible inference that could be drawn.

7. The unrepresented accused in a criminal trial chooses not to testify first. He calls a defence witness - his brother. He is very unhappy with his testimony and therefore decides to testify. Which of the following statements is true?
   a) The court may draw an adverse inference against him provided it can be shown that the contents of s 151(1)(b) of the CPA were brought to his attention.
   b) The court may not draw an adverse inference against him because it is his right to testify in his defence.
   c) The court may draw an adverse inference against him if he cannot provide a reasonable explanation for his failure to testify first.
d) The court may draw an adverse inference against him if he cannot provide a reasonable explanation for his failure to testify first and it is proved that he tailored his testimony in the light of his brother’s evidence.

8. Lindiwe is a 13 year old complainant in a rape case. She alleges she was raped in a public toilet at Scottburgh beach. There were no witnesses. She admits she is sexually active, and evidence was led that she had an abortion about 8 months ago. Which of the following statements is true?
   a) The cautionary rule is applicable because on Lindiwe’s own testimony, she had an abortion and engages in consensual sex.
   b) The cautionary rule is applicable because of her age, the fact that she is a single witness and the fact that she is a complainant in a rape case.
   c) The cautionary rule means that unless corroborative evidence is present, the state cannot secure a conviction on the alleged rapist.
   d) The cautionary rule is applicable because of her age and the fact that she is single witness to the alleged rape.

9. Ms Croft is being prosecuted for theft of video equipment worth R789 000. Her defence is a bare denial of her guilt (i.e. she just says she didn’t do it). At the end of the trial, the judge is not absolutely convinced that Ms Croft is telling the truth. He finds that there is however a reasonable possibility that she is telling the truth. Which of the following is correct?
   a) Ms Croft will be acquitted because the state has not proved her guilt beyond all doubt.
   b) Ms Croft will be acquitted because she has proved her innocence on a balance of probabilities.
   c) Ms Croft will be acquitted because she has proved her innocence beyond a reasonable doubt.
   d) Ms Croft will be acquitted because the state has not proved her guilt beyond reasonable doubt.
10. Mr Bol is being prosecuted for murder. His defence is based on an alibi. He says his mother will testify that he was at home watching TV at the time of the murder. At the end of the trial, the judge finds it impossible on the evidence to determine whether Mr Bol's alibi is valid. Which of the following statements is correct?
   a) Mr Bol will be convicted, because the accused has not satisfied the burden of proving his alibi defence.
   b) Mr Bol will be acquitted, because the state has not disproved his alibi.
   c) Mr Bol will be discharged because the state has not made out a prima facie case against him.
   d) Mr Bol will be convicted because the state has proved the elements of the crime, and there is no reasonable doubt about his guilt.

11. Mr Salamander is being prosecuted for murder. His admits that he did stab the deceased in the head, and that the stab wound proved fatal. He alleges that he was acting in self defence. At the end of the trial, the judge finds that she cannot determine whether the state's witnesses are lying or whether the defence's witnesses are lying. Will the court acquit or convict Mr Salamander?
   a) Because Mr Salamander has raised a special defence, the onus of proof is on him. He has not met it, so he will be convicted.
   b) Because the state has not met its burden of proof, Mr Salamander will be acquitted.
   c) Because Mr Salamander has admitted the essential elements of the crime, he will be convicted.
   d) Because this is a statutory offence, the onus of proof rests on the accused, so Mr Salamanader will be convicted.

12. Defendant admits that he punched and kicked Plaintiff and that during the course of the assault he damaged Plaintiff’s clothes and glasses. Plaintiff institutes a civil trial for compensation against Defendant. Defendant argues that he is not liable for the compensation claimed because he was acting in self defence. Plaintiff denies that this is so. At the end of the trial the judge cannot determine who is telling the truth. Which of the following statements is true?
   a) Plaintiff will succeed because Defendant has failed to meet the burden of proof upon him to prove his defence.
b) Plaintiff will fail because he has failed to meet the onus of proving all the elements of his claim.
c) Plaintiff will fail because he has failed to meet the onus of disproving the defendant’s defence.
d) Defendant will be granted absolution from the instance.

13. Mr Reddy is being prosecuted for rape. His defence is that he is not criminally responsible. After hearing numerous psychiatrists on this, the court is none the wiser. 3 psychiatrists testify convincingly that he is insane, while another 3 testify equally convincingly that he is not. Which of the following statements is true?
   a) If the reason for Mr Reddy’s lack of criminal responsibility is extreme provocation, he will be convicted.
   b) If the reason for Mr Reddy’s lack of criminal responsibility is extreme drunkenness, he will be convicted
   c) If the reason for Mr Reddy’s lack of criminal responsibility is mental illness, he will be convicted.
   d) Mr Reddy will be acquitted.

14. The plaintiff claims that he entered into a contract with the defendant in terms of which the defendant would rent his premises, that the lease has expired and that the defendant is therefore occupying the premises unlawfully. Which of the following statements is true?
   a) If the defendant denies that the lease has expired and asserts that he is therefore in lawful occupation, the onus of proving his defence rests with him.
   b) If the defendant admits the plaintiff’s allegations but alleges that after the expiry of the lease, it was renewed and that he is therefore in lawful occupation, the onus of proving his defence rests with him.
   c) Whatever defence the defendant raises, the onus of proof rests with him because of the principle ‘he who defends must prove’.
   d) Whatever defence the defendant raises, the onus of proof rests with the plaintiff because of the principle ‘he who asserts must prove’.
15. The complainant in a rape trial testifies that her shirt was torn by Mr X, that Mr X punched her in the face and finally that Mr X raped her. Indicate which, if any, of the evidence can be regarded as evidence corroborating her allegations of rape.
   a) Her torn shirt
   b) Photographs of her, showing a bruised face, and black eye. (It is not disputed the photo is of her and that it was taken shortly after the alleged rape).
   c) A letter to her friend saying she was raped.
   d) None of the above.

16. Which of the following statements is true?
   a) If the state has not made out a prima facie case at the close of their case, the court must grant absolution from the instance.
   b) If there is a reasonable possibility that the accused’s evidence will supplement the state’s case so as to provide the requisite evidence for a conviction, the court may refuse to discharge the accused.
   c) If there is a reasonable possibility that co-accused 2 will incriminate co-accused 1, the court may refuse to discharge co-accused 1 even if the state has not led any evidence connecting him with the alleged offence.
   d) All of the above

17. Which of the following is correct?
   a) A witness who does not understand the nature and import of the oath must be sworn in by way of the affirmation.
   b) The evidence given by a witness who is sworn in by the oath has a higher probative value than evidence given on affirmation.
   c) A witness who objects to the oath must be admonished to tell the truth.
   d) None of the above

18. Which of the following statements is correct?
   a) When two witnesses from the same side contradict each other on a material point, the judge should reject both versions and seek new evidence.
   b) Corroborative evidence may not be circumstantial evidence.
   c) If a party to civil litigation fails to call a material witness on a point, the judge may make an adverse finding against that party.
   d) None of the above.
19. Indicate which of the following options is the most correct option. The judge should be particularly careful when making a credibility finding
   a) when the witness is of a different ethnic background to him
   b) when an interpreter is used
   c) when deciding a case on appeal
   d) all of the above.

20. Which of the following is correct?
   a) Section 209 of the Criminal Procedure Act provides that an accused cannot be convicted on the single evidence of a witness.
   b) Section 209 of the Criminal Procedure Act provides that an accused cannot be convicted on the single evidence of a confession. There must be at least one other witness to confirm the confession.
   c) Section 209 of the Criminal Procedure Act provides that an accused cannot be convicted on the single evidence of a confession unless the confession is confirmed in a material respect or the crime is proved by evidence other than the confession to have been committed.
   d) Where an accused confessed to murdering the victim by poisoning him with arsenic, the existence of arsenic in the victim’s body was not regarded as satisfying the requirements of Section 209 of the Criminal Procedure Act, because it did not amount to independent confirmation of the confession.

21. Which of the following statements is correct?
   a) A dispute over the competence of a witness to testify is determined during a “trial-within-a-trial”.
   b) A public document is not intended for public use.
   c) Practically speaking, there is no difference between a public and a private document.
   d) For a document to be admissible, it must be proved that the content of the document is the truth.

22. Which of the following statements is true?
   a) When the subject matter of video-footage is at issue, the courts are unanimous that it should be treated as documentary evidence.
   b) Direct evidence always has a higher probative value than circumstantial evidence.
   c) Oral evidence is presented in the following order: firstly, examination-in-chief, then re-examination and lastly cross-examination.
   d) The requirements for the admissibility of real evidence are less stringent than those for documents.
23. Which of the following statements is true?
   a) The behaviour of a witness in the witness box, or an aspect of his physical appearance, may be real evidence regarding a relevant fact.
   b) Corroboration is required by statute only in the case of an extra-judicial admission.
   c) The evidence of a co-accused need not be approached with caution.
   d) The requirements for the admissibility of electronic evidence were greatly complicated with the introduction of the Electronic Communications Act of 2002.

24. Which of the following statements is true?
   a) A child under seven years of age will not be competent to give evidence even if she understands what it means to speak the truth.
   b) A child under fourteen is presumed to be a competent witness.
   c) When a witness gives unfavourable evidence, such a witness may be cross-examined by the party who called her.
   d) Although the scope of cross-examination is wider than that of examination-in-chief, questions asked during cross-examination should at least be relevant either to the issue or to the credibility of the witness.

25. Which of the following statements is false?
   a) In criminal cases where the onus of proof rests on the defence, the courts require proof upon a preponderance of probabilities.
   b) An accused is a competent witness in her own defence and can be compelled to testify by a co-accused.
   c) A court may convict an accused on the basis of circumstantial evidence.
   d) Examples of documentary evidence include the following: photographs, wills, books and drawings.

26. Which of the following statements is false?
   a) Real evidence must be proved to be ‘genuine and authentic’ before it is admitted into evidence.
   b) A presiding officer may take into account a witness's demeanour in the witness box to assess the credibility of a witness.
   c) A witness who presents a document containing information recorded by someone who is not a witness, to prove the truth of the contents is giving ‘hearsay evidence’.
   d) When corroboration is required, it does not mean that the burden of proof is influenced.
27. Which of the following statements is **false**?
   a) A document need not be authenticated when a court takes judicial notice of the document.
   b) While someone is a co-accused, she is incompetent to give evidence on behalf of the state.
   c) A witness may refresh her memory with reference to a document before the trial or during an adjournment.
   d) Refreshing of memory by a witness only takes place during cross-examination when the witness cannot clearly remember the facts on which he is being cross-examined.

28. Which of the following statements is **true**?
   a) A subpoena duces tecum is only used in criminal matters.
   b) The evidence of a co-accused must be approached with caution.
   c) Viva voce evidence refers to evidence with a low probative value.
   d) Evidence which is normally inadmissible may become admissible if its sole purpose is to corroborate other evidence.

29. Which of the following statements is the most correct option to choose?
   a) An answer to a question under cross-examination may provide corroborative evidence.
   b) When a court has declared someone to be a hostile witness, the witness may be cross examined be the party who called him.
   c) A categorical statement made by the accused’s lawyer while cross examining a witness may be regarded as an admission by the accused.
   d) All of the above.

30. Which of the following statements is **true**?
   a) A public document may only be evidence if it is authorized by the head of state or a diplomatic agent.
   b) Even though a document has been authenticated in its country of origin, its authenticity still has to be proved in a South African court.
   c) When the state is involved as a party in a civil matter, it must prove its case beyond a reasonable doubt.
   d) The evidence of a single witness can be accepted by a court, even though it might be susceptible to criticism.
31. Which of the following statements is **false**?
   a) A print out from a computer is inadmissible unless certified true and correct by a commissioner of oaths.
   b) A piece of evidence can be both electronic and documentary in nature.
   c) The silence of an accused may add weight to the state’s case and therefore cause the accused to be convicted.
   d) A criminal case starts off with the state’s case.

32. Which of the following statements is **true**?
   a) Precognition of a witness is unethical.
   b) An extra curial statement is usually inadmissible.
   c) When a court takes judicial notice of the law, it means that the fact is accepted as true by the court without either party leading evidence on it.
   d) Deaf and speechless persons are incompetent to testify.

33. A shoots and kills his wife’s employer in front of her and is subsequently charged with murder. Two witnesses testify on behalf of the state. A’s wife testifies about what she saw and a ballistics expert testifies that the bullet that was found in the body of the deceased was fired by a gun found in A’s possession. Which of the following statements is **false**?
   a) A’s wife is incompetent to testify in A’s criminal trial.
   b) The ballistics expert is a single witness.
   c) A’s wife cannot be forced to testify on behalf of the state.
   d) A’s wife is competent and compellable for the defence.

34. Which of the following statements is **true**?
   a) An accused may not be convicted if the prosecution only leads one single witness in support of its case.
   b) The rules that apply to inferences drawn from circumstantial evidence in a civil case is that the inference sought to be drawn must be consistent with all the proven facts, but the inference need not be the only reasonable inference. It is sufficient if it is the most probable inference.
   c) If the accused is charged together with someone else, the accused’s spouse is incompetent to give evidence on behalf of that co-accused, but can be compelled to do so.
   d) If a husband and wife are jointly charged with a crime, they are both competent and compellable witnesses for each other’s defence.
35. Which of the following statements is true?
   a) The purpose of allowing a witness to refresh her memory whilst in the witness box is to assist a witness. Thus she cannot be cross examined on the document she views for this purpose.
   b) Impeaching the credibility of a witness cannot be done with reference to a previous inconsistent statement by the witness.
   c) Re-examination is similar to examination-in-chief in the sense that they are both undertaken by the party who called the witness.
   d) A title deed and a birth certificate clearly do not qualify as public documents.

36. Which of the following statements is false?
   a) Re-examination is restricted to new matters raised during cross examination.
   b) One exception to the rule requiring proof of the authenticity of a document is when the opposing party is in possession of it, and is asked to bring it to court.
   c) “DNA fingerprinting” produces real evidence – thus reliability is not a requirement for its admissibility.
   d) The testimony of an eyewitness in a murder trial to the effect that he saw the accused running from a house with a bloody knife in his hand is direct evidence of the murder.

37. Which of the following statements is true?
   a) When evaluating circumstantial evidence, the court should not consider the cumulative effect of all the circumstantial evidence presented, but should consider each piece of circumstantial evidence in isolation.
   b) In civil cases different issues may generate different onuses of proof because of the basic rule that “he who alleges must prove”.
   c) Even if a co-accused has entered a plea of guilty and the trials of the accused and the co-accused are separated, the previous co-accused is not allowed to testify as a state witness against the accused.
   d) Witnesses may be called by the court if their testimony is essential for the just resolution of a criminal case.
38. Which of the following statements is true?
   a) Cross-examination is limited to matters raised during evidence-in-chief, and issues pertaining to credibility.
   b) Leading questions are always permissible in re-examination.
   c) The cautionary rule regarding identification evidence is limited to evidence in connection with an identification parade.
   d) The onus of proof rests on the state throughout a criminal trial, but the evidentiary burden sometimes shifts to the accused, for instance when good prima facie evidence has been given by the state.

39. Which of the following statements is true?
   a) In terms of section 196 of the Criminal Procedure Act a spouse of an accused is neither a competent nor a compellable witness in defence of that accused.
   b) If, at the end of the defence case, the accused has not proved her defence, she will be convicted.
   c) The general rule is that no evidence may be used to prove the contents of a document except the original document itself.
   d) Section 158 of the Criminal Procedure Act was declared unconstitutional in the case of S v F

40. Which of the following statements is false?
   a) An inspection in loco furnishes real evidence of what is inspected on site.
   b) One requirement which has to be met before a witness will be allowed to refresh her memory while in the witness box, is that the witness must have personal knowledge of the events recorded.
   c) It is compulsory to produce the original document in court even if the opponent does not object to the production of the copy, or where it can be shown that the original has been lost or destroyed.
   d) Blood and tissue samples taken in the course of an investigation of a rape, are examples of real evidence which need to be explained during the trial by means of expert evidence.
41. Whilst X is withdrawing money from an ATM (Automated Teller Machine) late at night, he is mugged. X identifies the perpetrator during a photographic identification parade. Which of the following statements is true?
   a) In certain controlled circumstances, photographic identification can provide conclusive proof of an accused’s guilt.
   b) Photographic identification parades are inadmissible because they have been discredited by research into their reliability.
   c) The reliability of the photographic identification would be affected by factors including X’s credibility and the opportunity that X had of observing the perpetrator during the robbery.
   d) None of the above

42. Which of the following statements is true?
   a) The distinction between real and documentary evidence is fuzzy in respect of technological media such as videotapes and cell phone recordings.
   b) Video footage is not classified as either real or documentary evidence. Legislation defines it as ‘aural/video’ evidence.
   c) The SCA has held that evidence recorded on a cell phone is inadmissible because of the problem of falsification.
   d) The SCA has authoritatively held that video footage is documentary evidence.

43. Which of the following statements is the best option to choose?
   a) Secondary evidence will be admissible where the original is destroyed or cannot be located after a diligent search;
   b) Secondary evidence will be admissible where production of the original would be illegal;
   c) Secondary evidence will be admissible where production of the original would be impossible;
   d) All of the above are true.
44. A group of pedestrians hears a loud screeching of tyres. One of them turns towards the sound and photographs a red vehicle that jumps a red robot and crashes into another vehicle which was crossing the intersection. Which of the following statements is true?
   a) The court can take judicial notice of the fact that if one set of traffic lights was red, the other was green.
   b) In certain circumstances, the witness may refer to his photograph while being cross-examined but not during his examination in chief.
   c) The photograph is real evidence, as regards the image captures upon it.
   d) The photograph is documentary evidence, in respect of the image captured upon it.

45. Which of the following statements is true?
   a) The person who took the fingerprint samples must be proved to be reliable before the fingerprint evidence will be admissible.
   b) Fingerprint evidence is circumstantial evidence, from which inferences may be drawn about the accused’s involvement in the crime.
   c) When fingerprints are used an expert witness compares an enlargement of the accused's fingerprint in court with the fingerprint found at the scene of the crime. If ten points of similarity are found, this is regarded as conclusive proof of the accused’s guilt.
   d) Fingerprint evidence is regarded as direct evidence of the accused’s guilt.

46. Mr X is involved in a very messy divorce from his wife. The wife wishes to rely on the pre-nuptial agreement in support of her maintenance claim. Which of the following statements is true?
   a) Only the notary who drafted the agreement can authenticate the document.
   b) The pre-nuptial agreement can be handed in from the bar, because of its special nature.
   c) The court may take judicial notice of the contents of such a document.
   d) None of the above.
47. The accused is charged with driving under the influence of alcohol after a policeman noticed him swerving his car across the road just before crashing into a parked vehicle. His wife and daughter were both with him in the vehicle. Shortly after the incident the accused’s wife divorced him because of his drinking problem. Which of the following statements is true?
   a) The accused’s daughter is competent but not compellable for the state.
   b) The accused’s wife is competent but not compellable for the state.
   c) The accused’s wife is competent and compellable for the state.
   d) The accused’s wife is competent but not compellable for the defence.

48. A and B are married. A, the husband, frequently abuses B (his wife) and their children. One night, when Z (B’s father) tries to intervene to protect them, A stabs him (Z). A is charged with the assault of B and their children; and with the attempted murder of his father-in-law, Z. Which of the following statements is true?
   a) A is competent but not compellable for the state as a witness in the attempted murder case.
   b) A is competent but not compellable for the state as a witness in the assault case.
   c) A is neither competent nor compellable for the state in either case.
   d) A is both competent and compellable for the state in both cases.

49. Which of the following statements is true?
   a) If a witness refuses to take the oath before testifying, she will be discharged from her duties.
   b) In a civil case, a party's failure to call an available witness to testify may not be used against him/her because of the right to silence.
   c) A cross-examiner is not entitled to ask questions which do not pertain directly to the facts in dispute.
   d) None of the above.

50. Which of the following statements is true?
   a) Judicial officers, like diplomats, are immune from testifying in SA courts.
   b) Lawyers are incompetent to testify in cases in which they are involved.
   c) Members of parliament are competent but not compellable witnesses in civil cases.
   d) None of the above
PART B [70 marks]

SECTION 2

Question 1

Amy, aged four, complains to her mother of an indecent assault by an uncle. Her mother is in no doubt that Amy is telling the truth. Horrified, she calls in the police who arrest and duly charge him. The prosecutor wants to proceed with the trial, but Amy’s mother is worried about the effect of the trial on her daughter. She contacts you for information about what to expect if her daughter testifies in the trial. Provide the necessary advice, outlining the procedures that will be followed by the court immediately before she testifies, and any special procedures that may be used to lessen the impact of the trial on Amy. Include in your discussion an examination of the constitutionality of section 170A of the Criminal Procedure Act. Refer to case law. (50 marks)

Question 2

Discuss the rules and principles which are applied by the courts when evaluating evidence. Include in your answer a detailed discussion of corroboration, and when (if ever) corroborative evidence is required for a court to make a finding of fact. Refer to case law. (20 marks)