

Examiner's Comments

Evidence

March 2009

General Comment: Where the candidates identified the issues correctly they dealt with those issues well. This was reflected in a relatively high percentage of D grades. A number of candidates failed to identify relevant issues.

Unless otherwise specified all reference to sections below are references to the Evidence Act 1995.

Question 1: The issues arising out of the facts included lay opinion evidence, and first hand hearsay, but the most important issue was the issue of whether Quentin's statements were hearsay. Analysis would show that these statements were introduced to prove that the statements by Quentin were uttered not to prove that they were true. The statements are thus not hearsay under the definition in s. 59 and are admissible under s.60. The issues arising from the plans that were indicated included evidence of tendency and coincidence, evidence of character, and credibility evidence going to bias.

Question 2: The issues that arose related to the evidence of fresh complaint, which is hearsay but admissible under s. 66 if the conditions are met. Candidates were expected to refer to cases including *Graham v The Queen* (1998) 195 CLR 606 and *Papakosmas v v The Queen*. Identification evidence is governed by ss 113-116 of the Evidence Act. The testimony of Officer Twist as to the identification parade is hearsay but admissible also under s. 66. Very few candidates indicated that the questions about the conversation with the rape trauma councillor might be precluded on the ground that they relate to a professional confidence, ss 126A-I, as echoed in the Criminal Procedure Act. However, if they are asked they give the prosecution additional grounds for introducing evidence of the statement to Mrs Coffee under s. 108.

Question 3: A large number of candidates failed to refer to the provisions in ss 81 – 89 dealing with admissions. The statement by the managing director is an admission. The managing director is a defendant and the statement is adverse to his interests. Those who failed to identify the statement as an admission argued incorrectly that it was admissible under the hearsay provisions and/or the opinion evidence provisions. The question also raised issues as to the admissibility of prior convictions (ss 91,92) and as to expert opinion evidence.

Question 4.

The weaker answers to this question failed to view it holistically and did not answer the general question as to whether the restriction can be justified.

Question 5

Candidates attempting this question generally answered it well. Candidates are reminded that the reasons for the decision rather than the facts of the charges should attract the most attention and that candidates are expected to comment on the contribution made by the case to the development of the law in the area.