

Legal Profession Admission Board

Evidence

September 2008

Examiner's Comments

This paper put slightly more emphasis on key issues as against testing general knowledge of the area. The result was that more papers received Distinction grades, while fewer papers received Pass with Merit grades.

Question One: Major issues were opinion evidence, judicial notice and compellability of witnesses.

Key issues were a) the use of the reports by the expert witness, the best answers referred to s. 60 of the Evidence Act and the decision in *R v Lawson* [2000] NSWCCA 214; b) ultimate issue, most students referred to s. 80 of the Evidence Act, fewer went on to refer to s 135 and 137 of the Evidence Act; c) application of s. 18 of the Evidence Act when the witness is called by the defence.

Question Two: Major issues were documentary evidence, credibility evidence and the duty to cross-examine.

Key issues were a) the application of s 51 of the Evidence Act; b) the application of s 43 of the Evidence Act; c) the application of s.106 of the Evidence Act.

Question Three: Major issues were hearsay, admissions, character, and proof

Key issues were a) the definition of hearsay and the application of this definition to evidence of statements of death where the charge related to fraudulently claiming death; b) the application of s. 83 of the Evidence Act; c) the effect of s. 141 (2) of the Evidence Act.

Question Four A - The very few candidates who attempted this question handled it well. The relevant provisions of the Evidence Act are ss 164 and 165. Relevant cases include *Longman*, *Doggett*, *Tully* and *Crofts*.

Question Four B – Although instructions indicate that answers are to refer to the Evidence Act and other case law in the area, the major emphasis must remain on the named case. A few answers dealt with the context and added reference to the case as an afterthought. The instructions also ask for an analysis of significance, some answers omitted such discussion.