Examiner’s comments – Winter 2018

The questions were drafted in slightly different styles to provide students with an opportunity to apply their analytical skills to differently structured problems.

Question 1

The first question was a civil problem and required a technical analysis of the provisions relating to hearsay and admissions, as well as other evidentiary issues. On the whole this was dealt with reasonably well, although some students had difficulty differentiating between the first and second-hand hearsay representations in the problem, and addressing the fact that one of the representations was also potentially a lay opinion. Students should be careful not to confuse opinion evidence as an “alternate, non-hearsay purpose” engaging s 60. The purpose of proving the opinion was the same as that which engaged the hearsay rule.

Other aspects of the problem required identifying and assessing admissions. Most students identified these well and some provided alternative exceptions to the hearsay rule, and appropriate bases for exclusion. However, students should be careful to note that Mr Murdoch’s admission was an admission made by an employee of a party, rather than a party.

Another part of the question raised the issue of expert evidence, and this was dealt with well, although there was scope for a deeper analysis of the applicability of the cases.

Most students also identified that the evidence regarding Captain Smith’s daughter was potentially relevant only to credibility, but some struggled to identify s 108A as the appropriate exception.

Finally, most students effectively dealt with the part of the problem relating to inferences and the rule in Browne v Dunn.

Question 2

The second question was a criminal problem and involved analysis of a number of issues. The several parts of Question 2 were more compartmentalised, making identification of the relevant issues a little easier, but also requiring deeper analysis of each issue.

Parts of this question raised tendency and coincidence evidence (ss 97 and 98). Most students identified that these were the central issue, but a number of students were not able to identify which form of reasoning was the appropriate one. Students should be careful to distinguish between the two types of reasoning and apply the appropriate section.

The parts of the question dealing with character evidence and illegally obtained evidence were dealt with well by most students. However, in relation to Jean’s evidence, some students were confused as to who made the relevant representation for the purposes of ss 65 and 66.