EVIDENCE MOCK EXAM 2019

MARKING SCHEME QUESTION 1

Admissibility of evidence, admissibility of out of court declaration as part of the res gestae as an exception to the hearsay rule stated in section 117 (1 mark

1. The question requires candidates to evaluate the ruling delivered and to state whether it accords with the principles on which hearsay statements are admitted as part of the res gestae.

2. Candidates are expected to define hearsay statements and briefly state the rule excluding hearsay statements **(2 MARKS)**

3. candidates are to identify res gestae as one of the statutory exceptions to the rule, as provided by section 124 of the Evidence Act **(2 MARKS)**

4. Candidates are expected to define the rule on admissibility of statements as part of the res gestae as a statement by a person about an event in issue, made in such circumstances of spontaneity or contemporaneous involvement in the event that the possibility of concoction or error can be disregarded, is admissible as evidence of the facts stated **(4 MARKS)**

Candidates are to discuss the two situations created by section 124 of the Evidence Act under which the rule applies.

5. Candidates are to discuss the fact that the issue of contemporaneity has been an issue in this area of law. Candidates are to demonstrate knowledge of the old authorities which insisted on strict contemporaneity such as R v Beddingfield, R v Teper.

6. Candidates are to discuss the fact that Duah was decided on the basis of the principles established in Beddingfield and approved off in Teper. Candidates may also discuss Woledzi V Akkufu Addo. **(4 MARKS)**

7. Candidates are to demonstrate evidence of having read Ratten v R and to show knowledge of the fact that Beddingfield was overruled in Ratten and

the statement made by the wife some minutes before she was shot was admitted as part of the res gestae. Candidates are to state the ratio in Ratten that the test of admissibility should be not the uncertain one whether the making of the statement was in some sense part of the event or transaction. This may often be difficult to establish; such external matters as to the time which elapses between the events and the speaking of the words (or vice versa) and differences in location being relevant factors but not, taken by themselves, decisive criteria. **(4 MARKS)**

8. Candidates in evaluating the ruling are to demonstrate evidence of having read R v Andrew and R V Turnbull which holds that
In order for the statement to be sufficiently ***'Spontaneous"*** it must be so closely associated with the event which has excited the statement that it can fairly be stated that the mind of the declarant was still dominated by the event. Thus the Judge must be satisfied that the event which provided the trigger mechanism for the statement was still operative **(4 MARKS)**

Candidates who discuss the five point test in R V Andrews are to be awarded extra marks **(2 MARKS)**

9. Candidates are cite and discuss **GPHA, CAPTAIN ZAIM vs. NOVA COMPLEX** where a statement made one day after the event was admitted as being part of the res gestae because the maker was still under the stress caused by the event.

10. The part of the ruling that the difference in time and place per se makes the statement inadmissible is not an accurate reflection of the law, the determinate factor being whether the maker of the statement was under the influence of the stress caused by the event at the time the statement was made. **(2 MARKS)**

MARKING SCHEME QUESTION 2A

AREA OF LAW: Circumstantial evidence as means of proof (1 mark)

Case law to be cited

Fenuku v John Teye (2001 – 2002) SCGLR 985

Sasu v White Cross .Insurance Co. Ltd (1960) GLR 4

Darbah v Ampah (1989-90) 1GR 598

In re Agyekum (Deceased) (2005-2006) SCGLR 851 **(6marks)**

Candidates who indicate that a judge has a duty to give good reasons why the expert evidence is rejected must be given extra marks and that the trial judge failed to appreciate this must be awarded extra marks. **(3marks)**

Tetteh v Hayford (2012) SCGLR 423

ON THE ISSUE OF THE BURDEN OF PERSUASION WHEN PROOF OF A CRIME IS DIRECTLY IN ISSUE

Candidates are to identify that generally in a civil trial, the burden of persuasion is on the preponderance of the probabilities (Section 12 of the Evidence) **(2 marks)**

Candidates are to identify that inspite of this, where a criminal act is the issue in a civil trial, the burden of persuasion requires proof beyond reasonable doubt citing

Section 13 (1) of the Evidence Act and case law such as Fenuku v John Teye (2001-2002) SCGLR 985 and Sasu Bamfo v Sintim (2012) 1SCGLR 136

The judge therefore was wrong on the submission that the applicable burden of persuasion was on the preponderance of the probabilities. **(7 marks)**

4marks for General assessment

The learned trial Judge in his ruling makes the following statements of the law; that direct evidence is better than circumstantial evidence, that a case cannot be established using circumstantial evidence alone, that in a murder trial, the prosecution could not make out a case relying solely on circumstantial evidence, especially if the body of the deceased is not found.

1. Candidates are to define circumstantial evidence, contrasting it with direct evidence. Candidates who cite cases like Kwaku Frimpong alias Ibo man to illustrate the definition are to be awarded extra marks. **(3 MARKS)**

2. Candidates are to indicate that as a means of proof circumstantial evidence is as potent and weighty as direct evidence. Candidates who cite cases such as R v Taylor, weaver and Donovan, Dexter Johnson, Kamil v Rep and Kwaku Frimpong V rep are to be awarded extra marks. **(3 MARKS)**

3. Candidates are to discuss the fact that owing to the potential dangers associated with the reception and use of circumstantial evidence as a means of proof, certain safeguards have been developed through case law to regulate its reception and use.
   (a) A multitude of suspicions put together does not constitute proof.
   State v Otchere, State v Ali Kassena.
   (b) Circumstantial evidence must be examined with care
   Nyame v The Rep, R v Danso.
   (c) The circumstantial evidence must lead to the irresistible conclusion that the person charged is guilty of the crime charged, in other words it must be inconsistent with the innocence of the accused.
   State v Brobbey and Nipa,State v Anani Fiadzo, Collins alias Derby V Rep.
   (d) A high standard of proof is required when circumstantial evidence is used.**(8 MARKS)**

4. Candidates are to refer to and discuss the cases in which circumstantial evidence has been received to establish the case of the prosecution in murder trials where the cause of death could not be proved or the body of the deceased was not found in reference to the portion of the ruling that suggested this could not be done. **(4 MARKS)** Bosso v The Rep, Rv

4. Candidates are to identify the fact that the relief sought in the second suit was one which ought to have been dealt with in the previous suit. Candidates are to refer to the case law establishing the principle that parties are not allowed to litigate piecemeal. **(4 marks)**

Advice to the defendant.

There is a subsisting judgment between the parties given by a court of competent jurisdiction. The reliefs sought in the present suit are such that they ought to have been claimed in the previous suit. The plea of estoppel per rem judicatam must be pleaded as a defence to the action. **(3 marks)**

Case law
Candidates who cite relevant case law and demonstrate how they are relevant to the question are to be awarded extra marks (4 marks)
Conca engineering v Moses (1984-86) 2GLR 319 Holding 1
In re Asere Stool (2005-2006) SCGLR 637 Holding 3
In re Sekyedumase Stool Affairs; Nyame v Kesse alias Konto (1998-99) SCGLR 476. Holding 1
Dahabieh v S.A. Turqui & Brothers (2001-2002) SCGLR 498
In re Kwabeng Stool Karikari v Ababio (2001-2002) SCGLR 15
Henderson v Henderson (1843) Hare 100
Barrow v Bankside Agency Ltd (1966) 1WLR 257
Sasu v Amua Sekyi (2003-2004) SCGLR 742

? In re Fofi v Ayya Atta - case tried by a ct ? competent jurisdiction cannot be tried by another court???
In re Okine - Kpegah JSC.

MARKING SCHEME QUESTION 4B

Area of Law: Expert Opinion Evidence; Burden of persuasion **(1mark)**

The ruling raises two main issues for discussion

1. Whether the opinion of an expert witness is binding on the trier of fact **(1mark)**
2. The burden of persuasion when proof of a crime is directly in issue, **(1mark)** in a civil case

Candidates are expected to state the law that a judge need not accept the opinion offered by an expert; the judge is only to be assisted by such evidence to come to a conclusion of his own after examining the whole of the evidence before him.

This principle has also been applied in several cases including the emphasis on the principle by Sophia Akuffo JSC ***in In re Kodie stool; Adowaa v. Osei*** as well as the definition of an illiterate in ***Zabrama v Segbedzi*** In the former case the Supreme Court set out the following as the requirements to be satisfied in proving a document executed by illiterates: 1. The writing must have been authorized by the illiterate. This implies that the testator Elder Coffie must have authorized someone to make the will for him. 2. Secondly the contents of the will must have been read by the writer to Elder Coffie: 3. Thirdly, Elder Cofie as an illiterate must have appreciated the contents of the will: 4.Fourthly, Elder Cofie must have signed or thumb printed or made his mark on the will to indicate that he actually executed it.: 5. The person who explained the will to the Elder must write on the will his name and address and state on the will that he explained the will to Elder Coffie and he appeared to have understood what was explained to him in respect of the contents of the will. The summary of these principles in ***the In re Kodie case*** has been accepted as the correct method for proving the execution of a document like a will by an illiterate like Elder Coffie. The onus is on Ace Kwamena Duncan to lead evidence to establish all these requirement. If these requirements are not satisfied, it will follow that the will was not properly proved and in that case the contention of Araba Lucy may be upheld by the court

(6. MARKS)

2. The distribution of the property of Elder Coffie is dependent on whether or not the will itself is valid. The attack on the validity of the will is based on the jurat. Once the issue of the jurat has been decided upon, the candidate does not need to consider other points that may touch on the validity of the will like signatures, etc since they are really not the bases of the objection of caveatrix and are therefore not in issue on the facts.

- **CONCLUSION**:

On the facts, there is no doubt that Elder Coffie was illiterate. Since

Candidates are to use the law as stated above to criticize the statements made by the learned trial judge, pointing out the wrong statements of the law, supported by arguments referring to the correct position of the law in each situation **(6 MARKS)**

MARKING SCHEME QUESTION 3

AREA OF LAW: Estoppel per rem judicatam **(1 mark)**

1. Candidates are to define estoppel briefly , and then to define estoppel per rem judicatam bring out the essential elements as that where a court of competent jurisdiction has adjudicated on a subject matter, the same matter cannot be subsequently be relitigated by the parties or their privies as long as the judgement subsists. **(4 marks)**

2. Candidates are also expected to discuss the fact that the plea also covers claims, defences or issues which should have been litigated in previous proceedings but owing to negligence, inadvertence or even accident, they were not brought before the court. **(4 marks)** In Re Omine - pc R passed JSC

3. Candidates are to identify the two species of estoppel per rem judicatam, that is cause of action estoppel or issue estoppel and set out the elements of each one. **(4 marks)**

4. Candidates are to set out the conditions precedent for the application of the plea as follows:
   (a) A judgment that has been delivered establishing the identity of the parties, the date, the issues and the relevance of the judgment to the issue in question

   (b) That the judgment was passed by a court of competent jurisdiction

   (c) That the judgment was final in that it determined the disputed rights of the parties

   (d) The judgment was decided on the merits of the case

   (e) The judgment was obtained without fraud **(5 marks)**

It was held in ***In re Bremansu*** that where the testator cannot read English, he will be considered to be illiterate. The facts show that Elder Coffie cannot write in English but he can speak some English. A will is a technical document usually written in English language. If all that the testator can do is to speak in English but cannot read or write in English, then he is illiterate.

In Zabrama v Segbedzi, Kpegah JSC stated what is relevant is the testator's ability to read and write the language in which the will was executed. Applying that principle will raise complex issues in the instant case, especially if the will by chance were to have been written in the Twi language. Candidates can proceed on the assumption that it was not written in the Twi language because if that were so it would have been stated on the facts. The better view was as expressed in ***In re Bremansu*** case. **(4 MARKS)**

- If the testator is illiterate, the law is that he is not bound by the document he signed as a will unless certain conditions are satisfied:***Kwamin v Kuffour***. The person attempting to bind the illiterate Elder Coffie with the will have the onus to establish that it was read and interpreted to him and he understood same before he signed or thumb printed it. There are several authorities in support of this principle including ***Waya Byrouthy, Zabrama v Segbedzi,and BP (West Africa) Ltd v Boateng***
- The same principle is stated thus: The onus of proving that the testator appreciated the meaning and effect of the will is on the party relying on the will. On the facts in issue, the onus was on the nephew, Ace Kwamina Duncan, to show that the will was interpreted and explained to the Elder and he fully understood same before he signed it or made his mark on it: ***Amankwanor v Asare*** ***(3 MARKS)***

- In effect, Candidates should argue that there should be a proper jurat on the face of the will before it will be binding on the illiterate testator. This is a requirement in the Illiterate Protection Ordinance, Cap 262, s. 4(3) which was applied in ***In re Kodie Stool: Adowah v Osei***.

not" – Chase position – [illegible] with the view that it matters
are ?? If it is relevant, it will be admissible [illegible]
Kuruma Bamang [illegible] @ Teper v Rep – [illegible]
if it is [illegible]

Nakuwa [illegible] v Rep – [illegible] a breach [illegible] further warrant, seized laptops which were [illegible] and [illegible]
obtained [illegible] – not admitted in [illegible] and not [illegible]
and weight.

Same as Cubrigue v Rep. – to an affect that
was admissible but not of probative value

R v Leatham – to the common law of [illegible] admissibility of evidence based on relevance, [illegible] version of [illegible] – 1 [illegible]

?? Amukwe v Tellat ??? amounts to breach
of fundamental rights and so inadmissible ??
??

?? Fox v. Chief Constable – duty of the court is to decide issues of trial and not to punish police investigators
of Gwent
??

??? International Ron v. Vodafone – electronic evidence is admissible – supported by Electronic Transaction Act (Act 772) ???

?? Jones v University of Warwick – pt claimant could not use her hands but videos ill-gotten from her home revealed otherwise ???

Victor Nwafor & Ors v The Republic search conducted with search warrant on the laptops of accused.

LAW OF EVIDENCE 2019 MOCK

General Scheme

1. **Identifying appropriate area(s) of law** — **1-2 Marks**
2. **Raising appropriate legal issues/use appropriate legal language** — **1-5 Marks**
3. **General discussion of the law** — **1-9 Marks**
4. **Application of discussion to issues** — **1-3 Marks**
5. **Citing and applying appropriate authorities and sections** — **1-6 Marks**

QUESTION SIX

Area of Law: Opinion Evidence; specifically admissibility of expert opinion evidence

Issue: Whether or not the test for the admissibility of expert evidence has been satisfied

This question seeks the discussion and application of the provisions on opinion evidence specifically sections 111 and 112. Candidates may also refer to section 67 on who is a qualified expert. Candidates shall discuss the requirement of the law for a witness to testify as to facts and not opinion. That a witness testifies to facts and not opinion. Candidates shall explain as to what is opinion evidence. Marks shall be awarded for discussing the exceptions to the rule on opinion evidence; namely lay opinion evidence and expert opinion evidence. Most marks shall be awarded for discussing the admissibility of expert opinion evidence as provided in section 112. Marks may be awarded for brief statement of the dangers inherent in expert opinion. Marks shall be awarded for stating the legal effect of expert opinion; the test for its admissibility: that is if the subject of the testimony is sufficiently beyond common experience; that the evidence will assist the court and the requirement of a qualified witness. Marks shall be awarded for reference to the type of qualification required in section 67: not academic qualification only but special skill, training or experience. Marks shall be awarded for reference to cases such as Mohan v R on the four test principle. Candidates must discuss whether the judge was bound by expert opinion or whether expert evidence is desirable but not necessary. In this case the main issue will be whether the testimony to be offered by the expert is sufficiently beyond the common experience. Marks shall be awarded for references to cases such as Manu alias Kabonya v State; Osei v R; Conney v Bentum Williams; Nyameneba v State etc.

NB: Though this question does not require discussion of the issue of the competency of a child as a witness, mark(s) may be awarded for brief reference to those facts.

QUESTION SEVEN

Area of Law: Relevance and admissibility of evidence; specifically admissibility of unlawful or improperly obtained evidence

Issue: Whether or not the evidence obtained by the investigator is admissible

the claim for the properties was based on a will to which the illiterate testator must have appended his signature or made his mark, if there was evidence of jurat on the face of the will, it will follow that the will was interpreted and explained to him before he made his mark or signed his signature. That will be sufficient to prove the validity of the will even though executed by an illiterate (4 MARKS)

TOTAL MARKS: 23 PLUS 2 FOR PRESENTATION MAKING A 25 IN ALL``

(1) Kokofu v Boateng — document that does not comply with Cap 212, S.4 is not valid executed by illiterate

(2) Mahamadu Hausa v Baako ... ps who cannot read is illiterate?

(3) In Re Okine - In executing a will by an illiterate, jurat must be on it in order to make it valid

question seeks to test the knowledge and application of the provisions on relevance and admissibility evidence with particular emphasis on the admissibility of evidence obtained by improper means. andidates shall discuss the general provision on admissibility of evidence in section 51; the exclusion provision in section 52 (more marks shall be awarded for stating and explaining the exclusion factors a-c of section 52). Marks shall be awarded for brief explanation of what constitutes evidence; relevant evidence; the issue of materiality and probative value of evidence. Marks shall be awarded to the brief explanation of the 'exclusionary/inclusionary' power/discretion of judges in admitting evidence, that is where the probative value is outweighed by prejudice. Most marks shall be awarded for discussing the position of the law on improperly obtained evidence. Candidates must state the common law position; which is it matters not how you get it: Crompton J in R v Leatham. Marks shall be awarded for brief discourse on positions in other common law jurisdictions, such as England after PACE and India. Marks shall be awarded for references to cases such as R v Jelen; R v Mason; State of Punjab v Baldev Singh. Candidates shall be rewarded for discussing the current Supreme Court decisions on the admissibility of surreptitiously recorded digital evidence namely Abena Pokuah Ackah v ADB and Raphael Cubagee to the effect that it may matter how you obtain evidence and the court will conduct cost/benefit analysis to make a determination on the admissibility of improperly obtained evidence. Marks shall be awarded for Marks shall be awarded for the use of appropriate cases such as DPP v Kilbourne; NDC v EC; R v Wilson; R v List; Selvey v DPP; State v Brobbey & Nipa etc. in the general discussion of what constitutes relevant evidence.

Scanned by CamScanner

MARKING SCHEME FOR QUESTION 2 B for 2019 mock exam

ELDER COFFIE'S CASE

1. Area of law
   Documentary Evidence with Special reference to illiteracy and proof of documents executed by an illiterate. **(2 MARKS)**

2. Issues:-
   i. whether or not Elder Coffie is an illiterate
   II. Whether or not as illiterate Elder Coffie is bound by the document (the will)
   III. Proof of document executed by illiterate **(2 MARKS)**

3. Applicable laws
   - Illiterate Protection Act (Cap 262), s. 4(3)
   - In re Kodie Stool: Adowah v Osei
   - Kwamin v. Kufuor
   - Zabrama v. Segbedzi
   - Brown v. Ansah
   - BP (West Africa)Ltd v. Boateng
   - Waya v. Byrouthy
   - In re Bremansu
   - Amankwanor v Asare **(2 MARKS)**

4. Analysis
   - Candidates should begin the answer by pointing out that the facts raise issues of documents executed by illiterates and proof of their binding effects.
   - The document is a will and so it can be presumed to have been signed or thumb printed by the testator, Elder Coffie
   - The basic question is whether or not Elder Coffie is illiterate as alleged by the caveatrix.