

CLP EVIDENCE MOCK EXAMINATION 2010

MARK SCHEME AND ANSWER POINTERS

PLEASE PAY ATTENTION TO THE AREAS SET IN THIS MOCK EXAMINATION. REFER TO YOUR REVISION CHARTS AND REVISION GUIDE

QUESTION 1

Letters of demand and AR cards

Discuss based on *Allied Bank* High Court decision and Court of Appeal decision. Discuss s.32(1)(b) and s.73A. If only have photocopies – High Court decision in *Allied Bank* – cannot admit under s.73A(1). What about s.73A(2)? See CA decision

[Optional - Can argue Letter of demand not tendered for truth of its contents but for the fact that the demand was made and the AR cards can be tendered as admissions.]

Photocopies of loan agreement, the charge the guarantee

Discuss s.91. Discuss s.62. Discuss s.63(b) – *Lee Kok Nam*, s.64, s.65(1)(c), s.104, s.65(2)(a).

Letter from company to the bank

Discuss admissions – s.17(1) EA, s.18(1) EA, s. 21 EA. Discuss s.23 EA. Conclusion. If only have photocopy – same discussion as on photocopies of the loan agreement etc above. Conclusion.

Bank statements

Discuss section 90A. Discuss *Gnanasegaran a/l Pararajasingham*. Note Explanation 3 to section 62. If only have photocopies – same discussion as above.

[This question is quite similar to Question 1 January 2002 on page 90 of the Q&A Book but do not rely totally on the discussion on the letters of demand and AR cards as the answer was done before the CA decision in *Allied Bank*. So use what I discussed in class.]

QUESTION 2

(a) See Revision Charts and answer to Question 5(a) & (b) January 2002 – page 103 of Q&A Book.

(b) See Revision Charts and answer to Question 2(a) September 2002 – page 77 of Q&A Book

QUESTION 3

(a) Issue – whether Sanjeev's evidence is admissible. Discuss general rule. See if the evidence can be admitted under the similar fact exception. Discuss s.14 - conclusion. Discuss s.15 – conclusion. Discuss the common law exception – *Boardman, Veeran Kutty, Junaidi*. Discuss s.11(b). Also note decision in *Azahan*. State on conclusion on whether the evidence is admissible.

(b) See outline answer in Revision Guide.

QUESTION 4

(a) A discussion of section 27. Refer to your charts. Discuss the judge's discretion to exclude. State your conclusion. [Can see printed answer to Question 4 July 2000]

[On section 27 also note recent case - *Amathevelli P Ramasamy v. PP - Federal Court - Section 27 of the Evidence Act 1950 ('EA') did not require the question to be recorded before the information might be admitted* under the said section. Case decided by Augustine Paul. More in line with the approach taken in *Sum Kum Seng* and *Hashim bin Hanafi*.]

(b) (i) Discuss section 105 EA. *Jayasena*.

(ii) Legal burden - Discuss s.103. Illustration (b). Evidential burden - Discuss *Yau Heng Fang, Illian & Anor* and *Arumugam a/l Mothiyah*.

(iii) evidential burden – *Nagappan a/l Kuppusamy (SC)*.

QUESTION 5

(a)

(i) See Revision Guide where there is a summary of the answer. Also see Question 4 January 2002 – page 99 of the Q&A Book and Question 1(a) September 2002 – page 77 of Q&A Book.

(ii) See Question 4 January 2002 – page 102 of Q&A Book.

(b)

(a) Relevancy of the statement - s.9 - supports the inference that he was at the scene of the crime and rebuts his defence of alibi, s.7 - opportunity. Underlying assumption on the part of the unknown person was that Sam Seng was there - see *Teper*. English cases such as *Kearley, Teper* and *Wright v Doe D Tatham* – implied assertions are caught by the rule against hearsay and inadmissible. Submit that these cases are wrongly decided and not binding in Malaysia. Hence the evidence is not hearsay. In any event here can argue that the evidence can be admitted under section 6 as a statement which is part of the same transaction. Discuss illustration (a).

(b) Relevancy of the statement - s.8 - motive, s.14 - ill-will, intention. Discuss illustration (p). Can discuss *Boota Singh*. Discuss s.64 – original letter. Other issues - handwriting - s.9 identity, s.45 handwriting.

(c) Relevancy - statement a bit vague - s.9 identity, s.9 support the inference, s.7 - state of things (circumstances of the transaction resulting in her death). Tendered for truth of its contents - hearsay and inadmissible. Exception - s.32 (l) (a) - What are the conditions? Actual words - *Toh Lai Heng, Ong Her Hock*.

Conclusion – not admissible.

[Instead of secondary hearsay can use conduit pipe argument with regard to the nurse – however because of the word – *briefly* – it is unlikely to be admitted.]

(d) Relevancy of her statement - s.8 - motive, s.14 - ill-will, s.9 - support the inference Sam Seng may have killed her. If tendered for truth - hearsay and inadmissible - Exception - s.32(l)(a) - *Boota Singh* - court did not admit the police report made by the deceased that the accused had threatened to kill her made 9 months before her death. Also see *Yeoh Hock Cheng, PP v Samer Klom Klom*, Conclusion.

If fact that statement was made - not hearsay. Original evidence. Fact that statement was made must be relevant - here relevant - s.8 - motive, s. 14 - ill-will, *Boota Singh, Hamsa Kunju*,

QUESTION 6

Note: each of them has a number of previous convictions for the same offence and other offences.

Jahat Singh - did not appear as a witness - however the judge allowed him to be cross-examined. - This is clearly a ground of appeal. A person who does not give evidence cannot be cross-examined.

Abu Jahal:

- s.54 (2)(a) - with regard to the previous convictions for the same offences.

- s.54(2)(b) 1st limb - says in evidence he was attending a religious meeting when the police arrested him. [Note that this has nothing to do with the defence of alibi.]

- s.54(2)(b) 2nd limb - Also says that Inspector Martin (PW 3) who arrested him and is also the Investigating Officer has fabricated evidence against him. ..

Discuss each of the above using your notes. Is there a ground of appeal here?

Sam Seng:

- s.54 (2)(a) - with regard to the previous convictions for the same offences.

- s.54(2)(c) - Sam Seng says in evidence that he planned the robbery with Abu Jahal two months before they decided to proceed with it on 27 February 1994.

Is there a ground of appeal here?

Fingerprint issues - Section 45 provides that expert evidence is required for fingerprints - hence there is a ground of appeal here. No cases directly on this point - however can look at cases on 'handwriting'¹ - which is also provided in s.45 - *Syed Abu Bakar bin Ahmad v PP* - Federal Court held that the judge without the

assistance of an expert should not have found as a matter of fact that the handwriting was not that of a certain witness.

Section 27 – cannot be used to admit the whole 3 page statement made by Sam Seng. Section 27 only admits so much of the information as relates distinctly to the fact thereby discovered.

QUESTION 7 [see printed answers for similar questions in your Q&A]

(a)

(i) Discuss the procedure to introduce Y as an expert. Discuss **Wong Chop Saow** and **Lin Lian Chen**.

(ii) Discuss competency or qualifications of an expert. Gazetted experts – **PP v Saad bin Mat Takraw**. If not gazetted expert - **PP v Mohamed bin Sulaiman, Junaidi bin Abdullah, Dato Mokhtar Hashim**.

(iii) Role of expert – **Wong Swee Chin**. Discuss s.51 – Look at cases on grounds of opinion – **Sim Ah Song, PP v Alcontra**.

(b)

(i) See page 48 of Revision Charts

(ii) See page 48 of Revision Charts

(iii) See page 47 of Revision Charts and Textbook.

[I also want you to study impeachment.]

QUESTION 8

(a)

1. Tina – 9 – statutory rape. All prosecution has to prove is that there was sexual intercourse. Consent is irrelevant.

2. Here it looks as if Alberto will dispute Tina's identification evidence.

3. Tina's evidence – judge has to conduct preliminary examination – discuss **Arumugam a/l Mothiyah** and **Sidek bin Ludan**. Discuss the test for sworn evidence. Discuss the test for unsworn evidence – s.133A.

4. Discuss the corroboration requirement for sworn evidence. Discuss the corroboration requirement for unsworn evidence – proviso to s.133A.

5. What are the requirements of corroborative evidence? Discuss **Baskerville**. Also discuss s.157.

6. Discuss items of evidence

- Rape at 10 pm – relevant under s.9 - fix time and place where offence took place.
- Alberto will deny identification – since do not know each other should have identification parade – Sarjeet Singh. Also have to discuss **Turnbull warning**. Cases – **Rangapula, Chan Choon Keong, Jaafar bin Ali**. What does the warning entail? Must look at circumstances in which the identification was made - only 5 minutes, Tina did not know Alberto...what if the identification is weak?
- Tina told her mother what happened to her – discuss s.8 – complaint. Discuss **Aziz bin Muhammad Din**. Also discuss s.157. Discuss **Lim Guan Eng**. Note that the proviso to s.133A is contrary to s.157.
- Tear in hymen – s.7 effect of the rape, s.9 supports inference there was sexual intercourse. Evidence is admissible doctor can testify. Corroboration only required on factum of rape – discuss **Din v PP**. On identification she is like any other witness. However note decision in **Majid bin Mohamed – Din** confined to its own facts. Need corroboration on both factum of rapen and the identification of the offender. Note that if Tina gives unsworn evidence **Din** cannot apply. Why? The proviso to s.133A gives effect to the **Baskerville** definition of corroboration.

7. Conclusion

(b)

See answer to Question 6 January 2002 – page 107. Both part (a) & (b)

PROFESSIONAL PRACTICE LAND LAW MOCK EXAMINATION 2010

ANSWER POINTERS

QUESTION 5

1. A question based on *North Plaza Sdn Bhd v United Securities Sdn Bhd*. See page 5 of Final Land Law Revision Class Handout.
2. Note that this question is different from what is usually set. Usually the question set is on removal of caveats and the issue is whether the caveator who is a shareholder of the company has a caveatable interest. See cases such as *Luggage Distributors, Natsafe Sdn Bhd v Loi Teak Kuong* and others on page 3 of Focus Area 3. [Do not write this down in your answer.]
3. Here Maltec applied to remove Northam's caveats under section 327. Discuss s.327(1).
4. The issue is whether Maltec would be an aggrieved person or body to have locus standi under s.327(1)
5. Here Maltec was not the registered owner of the land in respect of which the caveats were lodged. The registered owner was PSB.
6. It is an elementary principle of company law that a company - in the context of the present case, PSB - is a legal entity which is independent and separate from its shareholders.
7. It therefore followed that Maltec, having merely an interest in the shares of PSB, did not have any proprietary rights, either legal or equitable, over the parcels of land.
8. Hence, Maltec was not an aggrieved person (or body) in relation to the parcels of land and the caveats for the purpose of s. 327(1) of the NLC.
9. If at all any party was aggrieved by the existence of the caveats, it would be PSB and not Maltec.
10. Since the Maltec was not an aggrieved person or body, it had no locus standi to make the application under s. 327(1) of the NLC. and no burden will be placed on Northam to satisfy the 3 stage test in order for the caveat to remain.
11. Conclusion – Northam should appeal.

QUESTION 6

- a. A question on indefeasibility based on *Tan Ying Hong*. See Land Law Final Revision Class Handout – page 7 to 9.
- b. Basically you have to advise Subramaniam on the viability of an appeal against the Court of Appeal decision. The CA has refused to declare the charges null and void on the basis that the PA was forged relying upon the words of [s. 340\(2\) and \(3\) of the National Land Code \('NLC'\)](#), and the authority of the Federal Court decision in *Adorna Properties Sdn Bhd v Boonsom Boonyanit*.
- c. In order to get such a declaration Subramaniam will have to establish that the charges are defeasible.
- d. Note that as a registered chargee, by virtue of s 340(1), Public Bank will have an indefeasible interest.
- e. Here Subramaniam will want to rely on s 340(2)(b) which provides that the interest shall not be indefeasible where the registration of the interest was obtained by forgery or by means of a void or insufficient instrument. [Look at cases in Focus Area 2 Notes]
- f. Note that the burden of proving the forgery will be on Subramaniam and that standard proof is on the balance of probabilities – *Adorna Properties v Boonsoom Boonyanit*.
- g. If he is unable to prove it the charges will remain indefeasible and Subramaniam will not get the declaration he is seeking.
- h. If he can prove the forgery or the void or insufficient instrument then, the charges will be defeasible.
- i. Here the CA has followed the FC decision in *Adorna Properties*. Discuss briefly the effect of this decision. Note that it provides for immediate indefeasibility. Apply this on the facts. State your conclusion. [optional – not necessary to discuss.]
- j. However the FC decision in *Adorna Properties* has been overruled by the Federal Court in *Tan Ying Hong*.
- k. Discuss the effect of the decision of the Federal Court in *Tan Ying Hong* which decided that s.340 provides for deferred indefeasibility. You must read this case and apply this case to the facts. Note that the proviso cannot be looked at for the transaction where the vitiating circumstance (here the forgery /

void or insufficient instrument) took place. It is confined to subsequent transactions. Hence it does not matter whether the bank was a bona fide purchaser for valuable consideration or not. [You must read

- l. State your conclusion – if the forgery is proven the charge will be defeasible.

QUESTION 7

1. A question on order for sale based on *Kwan Chew Holdings Sdn Bhd*. See Land Law Final Revision Class Handout - page 17. Refer to sample answers in Focus Area 3.
2. Here the High Court ruled that the XSB had failed to show any cause to the contrary under s. 256(3) of the Code and as such allowed the Maybank Bhd's application for the order for sale
3. The viability of an appeal will depend on whether XSB can show cause to the contrary.
4. You must discuss *Low Lee Lian* in detail on when there is cause to the contrary and apply it to the question.
5. Also discuss decision in *Kwan Chew Holdings Sdn Bhd* and any other cases in your notes which would be relevant.
6. Conclude on whether XSB can show cause to the contrary and the viability of an appeal.

RECENT DEVELOPMENTS – LAND LAW

SECTION 254 – FORM 16D o sample answer in Focus area

NLC section 254 of the National Land Code has been amended to overturn the effect of the CA decision in *Citibank v Mohammad Khalid Farzalur*. Hence the minimum period is now at least one month and the alternative period specified in the charge cannot be less than one month. This amendment is in your statute book unless you are using an older one. Please check. This could be important for an order for sale question as if the notice requirement is not complied with, there would be cause to the contrary.

CLP GENERAL PAPER TORT MOCK EXAMINATION 2010

1. A very straight forward question though there are quite a number of issues. All the material you need is in your revision charts. Make sure you know the revision charts inside out.
2. For the answer format you should look at the revision checklist in pages 21 to 23 and the 2 detailed printed answers that I have given to you.
3. The Statement of Claim is a combined one for all the claimants. Use pages 11 to 16 in your Revision Charts to attempt this. There is no need to bring any estate claim on the facts of this question.
4. Call me on 016-3026778 if you need clarification.
5. Please attempt this question if you haven't already done so as it covers about 70% of your tort syllabus.