FACULTY	FACULTY OF LAW		
DEPARTMENT	MATURE AGE ENTRY EXAMINATIONS		
SUBJECT	LAW SPECIFIC PAPER		
SUBJECT CODE			
DATE	1 SEPTEMBER 2017		
DURATION	3 HOURS	MARKS	100

Examiners: PROF. SK AMOO and Mr. PM BALHAO

This question paper consists of TEN pages (including this **front page**)

Instructions: ANSWER ALL QUESTIONS. IN SECTION B CANDIDATES ARE REQUIRED TO CHOOSE ONLY ONE TOPIC FOR THE ESSAY.

UNIVERSITY OF NAMIBIA EXAMINATIONS

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SECTION A

Read the passage and answer the questions that follow. Candidates are advised to answer the questions in their own words.

An Extract from '**Understanding Law, an introduction to Australia's legal system'** by Richard Chisholm and Garth Nettheim

Evidence

The decision of a case where facts are in dispute can only be based on evidence as to those facts. No evidence is admissible in court proceedings unless it is *relevant* to the issue in question. If you were being tried on a charge of offensive behaviour arising out of a street demonstration, it would be irrelevant to the charge for the prosecution to produce evidence that you had been charged with evading bus fares three years earlier. That evidence would be "inadmissible".

The rules of evidence are complex. They are designed to keep out evidence which is irrelevant, or even evidence which might be relevant but would unfairly prejudice the court. The rules are particularly strict

in criminal cases.

We will not go into details, but simply give a few examples:

(a) A person may be on trial for a criminal offence. If he had made a confession to the police, or even a statement which is not a confession, this might well be relevant. But the courts will only admit it as evidence if it was made voluntarily, and not if any threat or promise had been made to get it. Furthermore, the judges may not admit such a statement as evidence if the person had not first been warned by the police that he was under no obligation to say anything, and that anything he did say might be used as evidence.

The police sometimes complain that these strict requirements hamstring investigation of crime, that innocent persons have nothing to fear in speaking up, and that the rules protect only the guilty by warning them to say nothing. They would like to see the rules modified in some way without jeopardizing the rights of the innocent. But others see them as essential in the interests of civil liberty.

(b) Evidence is not admissible in criminal proceedings to show that the accused has had previous convictions or to show that he is of bad character. The sole issue is whether he is guilty of the specific offence with which he is charged.

However, evidence of character and previous convictions is admissible after he has been found guilty, in order to assist the magistrate or judge to impose the appropriate sentence.

(c) Hearsay evidence is inadmissible. A witness may say what he knows of his own knowledge, but not what he knows merely because someone else told him. If A says in court that B told him that C had struck B, this would be inadmissible as evidence that C did strike B. (It might, however, be admissible if C was suing B for slander- here the issue is not whether C *did* strike B , but whether B *said* he did).

Hearsay evidence is excluded because it may not be reliable, and also because it is felt that the proper person to give the evidence is (in the above example) not A but B.

These and other rules of evidence are an important safeguard for fair trial.

Each party has a right to give evidence, usually in the form of oral evidence by witnesses in court. The other party also has a right to cross-examine those witnesses, to ask his own questions in order to discover other facts, or in order to diminish the weight of the evidence already given. If anything new comes out of cross examination, the first party may re-examine.

Generally, no evidence or information may be presented to the court in the absence or 'behind the back' of the other side. The common –law technique of examining witnesses by question and answer is designed to give the other side time to object so as to keep out inadmissible evidence.

Impartiality

So far we have seen that our court procedures attempt to ensure that each party can present his case to the courts fully and as fairly as possible. This, however, will not ensure a fair trial if the court itself is biased.

We have already considered, in chapter 7, the means by which the general independence of judges is achieved. They have independence and security of tenure, immunity from legal liability for things said or done in judicial proceedings, and so should fear no pressures from Government or anyone else.

But a problem of impartiality may arise in a particular case. For example, you may be suing a company and the judge may be a shareholder in that company. You may be suing your next-door neighbour for allowing his incinerator to get out of control so that it burnt down your garage, and the judge may turn out to be the neighbour's cousin. You may be a Ruritananian migrant, and the judge may have

said, in an earlier case, that he had always found Ruritanian migrants to be untruthful.

In each of these and similar cases, if the judge did not stand down of his own accord, you could object to him hearing the case. That 'no man may be judge in his own cause' is a fundamental principle, and will disqualify a judge from hearing a case in which he has some financial or personal interest, or in which other circumstances exist so as to raise a real likelihood of bias. It is not necessary to show that the judge is in fact biased- a real likelihood is enough. To quote the famous words of a former English Lord Chief Justice: 'Justice should not only be done but should manifestly and undoubtedly be seen to be done'.

Indictable criminal cases and many civil cases too, are tried not by a judge alone but by a judge and jury. The jury in such a case decides the facts. The possibility of bias among the jurors is sought to be met by provisions for 'challenge'. Either party has a right to challenge members of the jury panel if he thinks they may be biased against him for one reason or another. He may dismiss a certain number of jurors without giving a reason; beyond that point he must give a reason for challenge. The details vary from one type of case to another and from one state or territory to another. Generally the opportunity to challenge jurors is greater in criminal than in civil cases.

Trial by Bury

The use of jury trial is itself a special and characteristic feature of the common-law system. It is used for all indictable criminal offences, except where there is an option to have the offence tried summarily by a magistrate, and the option is made. It is also used for the trial of many civil actions at common law.

When jury trial is available, the effect is that the determination of facts, and the weighing up of evidence is entrusted to a group of one's fellow citizens rather than to a judge. The system has a long history and has considerable emotional overtones in our society, along with such things as habeas corpus and Magna Carta. John Citizen may have no idea what Magna Carta actually said, may be vague about habeas corpus, and may bitterly resent being summoned for jury service. But he may rise in righteous indignation if there is any suggestion of tampering with these cherished institutions.

No special qualifications are needed for jury service. Usually entry on the electoral roll is sufficient. Different classes of persons may be exempt from service, eg doctors, teachers, members of Parliament, lawyers, and others. Women are now eligible for jury service- but in some States they may ask for exemption, in others they must apply to be enrolled. Individuals may apply for exemption for personal reasons, eg illness, or sufficient command of the English language. The actual jury for a case is selected, by ballot and after challenges, from a larger number summoned to the court.

In criminal cases a jury of twelve is used. It hears the evidence, listens to the addresses of counsel for both sides, and to the judge's summing-up. He directs them, in accordance the law, as to what verdict they should return on various possible conclusions they man- reach about the facts. For example, in a murder case the judge might tell them that if they find that A did kill B and did so with deliberate intent, then they will return a verdict of guilty; if they find that A killed B but did so in self-defence or under provocation, they shall return a verdict of not guilty of murder but guilty of manslaughter; if they have any reasonable doubt whether A killed B at all, they should return a verdict of not guilty.

The jury then retires and, when it reaches a decision, delivers its verdict to the court. Traditionally criminal verdicts have to be unanimous and, if the jury fails to agree on a verdict, they are discharged and a new trial must be held. Recently in England and some Australian States provision has been made to receive verdicts of a large majority of the jurors in some circumstances after a specified time.

If the jury finds the accused not guilty, he is acquitted, and can never again be tried for the same offence. If the jury finds him guilty, the judge then imposes sentence.

The task of the criminal jury, then, is to decide facts in the light of the law as put to them by the judge.

The size of civil juries varies from one State to another, and there are possible variations within States. Civil jury verdicts do not have to be unanimous, and the decision of a specified majority may be accepted after a certain time. Jury trial is not available in all civil cases, even in

common law matters. In recent years, both in Australia and elsewhere, jury trials in civil cases have been giving way to trial by judges sitting alone. Juries make for longer and slower trials, and in civil cases they are not surrounded with the same emotional overtones as are criminal juries.

Most civil cases tried by jury are actions for damages, whether the cause of action is negligence or defamation or something else. As in criminal cases, the civil jury listens to the evidence and returns a verdict in the light of the law as put to them by the judge. But normally they must then go on to assess the amount of damages (if any) which the defendant should pay. In criminal cases, the judge decides on sentence; in civil cases the jury decides on damages.

Questions

1. With reference to the text, explain the difference between admissible and inadmissible evidence is.
   {5 MARKS}

2. Explain the court proceedings that are meant to ensure that each party can present his/her case to the courts fully and as fairly as possible.
   {5 MARKS}

3. What do you understand by the following phrase having regard to partiality of judges:

   "Justice should not only be done but should manifestly and undoubtedly be seen to be done"
   {5 MARKS}

4 With reference to the text, explain what hearsay evidence is and why it is not admissible

{5 MARKS}

5 Write a summary of part of the passage titled *Trial by Jury* in approximately 240 words. **{20 MARKS}**

NOTE: Candidates who exceed the prescribed number of words will be penalized.

SECTION B

Write an essay not exceeding three pages on ANY ONE of the following topics.

(a) Law as an instrument of reduction of poverty.

(b) The role of lawyer in the community. **{60 MARKS}**

(c) The socio-economic and legal ramifications of the "shebeen" phenomenon in Namibia.

(d) The right to ancestral land as an effective land reform strategy in Namibia.

TOTAL /100/