

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Evidence
Semester-V (Batch: 2017-22)

End Semester Examination: October-2019

Date: 17th October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

Answer the following questions

Marks

- Q.1 (a) 'A' prosecutes 'B' for adultery with 'C', 'A's wife. 'B' denies that 'C' is 'A's wife, but the court convicts 'B' for adultery. Afterwards, 'C' is prosecuted for bigamy in marrying 'B' during 'A's lifetime. 'C' says that she never was 'A's wife. What is the rule of evidence for admissibility of judgment? (5x1=05)
- (b) The question is "whether a given letter is in the handwriting of A?" a merchant in London. 'B' is a merchant in Calcutta who has written letters addressed to 'A' and received letters purporting to be written by him. 'C' is 'B's clerk whose duty was to examine and file 'B's correspondence. 'D' is 'B's broker to whom 'B' habitually submitted the letters purporting to be written by 'A' for the purpose of advising him thereon. Whether the opinions of 'B', 'C' and 'D' that the letter is in the handwriting of 'A' are relevant?
- (c) 'A' desires a Court to give judgment that he is entitled to certain land in the possession of 'B', by reason of facts which he asserts, and which 'B' denies to be true. Whom the burden of proof lies upon?
- (d) The question is whether 'A' committed a rape and murder on 30-3-2011 against a house wife in RPC Layout of Bangalore at around 5 P.M. The fact was that on that day 'A' was at Ahmedabad watching India v. Pakistan semi-finals World Cup cricket match, and he produced entry ticket issued by the stadium authorities and also flight ticket of GoAir, which was departed from Bangalore International Airport at 3 P.M to Ahmedabad. What is the admissibility of evidence produced by 'A'?
- (e) The question is "whether a certain document is the Will of 'A' or not?" The facts that not long before the date of the alleged Will, 'A' made enquiry into matters to which the provision of the alleged Will relate, that he consulted vakil in reference to making the Will, and he caused drafts of other Wills to be prepared, of which he did not approve are relevant. Why?

- Q.2 "The opinion of a physician or a surgeon may be admitted to show the physical condition of a man, the nature of a disease, the nature of injuries and the weapons with which they were caused. The medical evidence has never been considered to be substantive evidence but has been considered as only corroborative evidence". Elucidate with the help of decided case laws. (05)
- Q.3 "Dying Declaration is an exception to the general rule of hearsay evidence and makes admissible the statement of a person who dies, whether the death is homicide or a suicide provided that statement relates to the cause of death, or exhibits circumstances leading to the death. If a person dies not on account of injuries which are inflicted on him but on account of some other reasons or ailment, the dying declaration will not be admissible" Elucidate the above principle with the help of decided cases. (10)
- Q.4 On 19th of May, 2019 at about 9.00 AM, a minor boy named Chintan left for his father's Hardware shop during the vacation of the Schools. In the afternoon, Raman bhai, father of Chintan came to home for lunch, enquired about his son, as he had not come to the shop. The family waited for Chintan till evening and thereafter started searching for him. They made various telephone calls to the relatives and enquired in different places where the boy was expected to have gone and finally lodged a missing complaint in Gandhinagar Police Station. Next day, at about 9.30 A.M, Raman bhai has received a call from one unknown person and told that, he only kidnapped Chintan and will be released if the ransom amount of Rs.5,00,000/- will be paid. And also informed Raman bhai to meet him near Dholeswar Mahadev temple at 12 Noon. Raman bhai along with the company of police reached at the said temple at 2.30 P.M, but nobody was found nearby. The police started searching everywhere and finally reached Tea Post shop near Baijipura cross for refreshment. As soon as seeing the police at the Tea Post shop, two persons who were sitting in the said shop suddenly started running from the place. Immediately, Police followed both the persons and arrested them as they were trying to escape from the place. During the investigation, Nagendra, one of the accused made confessional statement to the police admitting the commission of the crime but refused to make the same before the magistrate. But, Rajan bhai, another accused expressed his willingness to make confessional statement voluntarily to the magistrate. Upon the request of Police, the magistrate arrived and Rajan bhai made a confessional statement. The Magistrate did not give warning to the accused and recorded the confessional statement which is as follows:- (10)
- "I along with Nagendra bhai kidnapped Chintan and murdered him by cutting his neck with knife and kept the dead body behind the bush near Dholeswar Mahadev temple and the knife in the house of his friend namely Pradeep, who stays behind Prateek Mall."*
- The police team along with the company of accused persons discovered dead body, Pradeep, knife from the respective places. The trial has commenced against both the accused persons before the Sessions Court, Gandhinagar.
- Discuss the admissibility of confessional statements made by the accused persons to Police & Magistrate based on the above facts with the help of decided cases and provisions of the Indian Evidence Act, 1872. What is the relevancy of the facts discovered on the basis of the information received from the accused persons?
- Q.5 It has always been a controversy and question of law in establishing 'whether the commission of suicide by a woman had been due to abetment by her husband or any relative of her husband' or 'a person has committed the dowry death of a woman'. What is the difference between burden of proof in both the cases? Discuss the ingredients required for raising presumption in both the cases with the help of decided cases and provisions of the Indian Evidence Act, 1872. (10)

- Q.6 Is there any conflict between the general burden to prove the guilt beyond reasonable doubt and the special burden that rests on the accused to make out his defence while availing the exception provided under section 84 of the Indian Penal Code, 1860? Discuss the stages of discharging burden and onus by prosecution and defence respectively in the above case with the help of relevant provisions of the Indian Evidence Act, 1872 and decided cases. (10)
