

Legal Profession Admission Board

Examiner's Comments

11 EVIDENCE March 2025

The exam comprised of two questions. Candidates were required to answer both questions. All questions were of equal value (50 marks each).

Question 1

Question 1 was a criminal case and was designed to test the application of evidence principles in criminal matters, including: the rule against hearsay and the hearsay exceptions, compellability of witnesses, tendency and coincidence evidence, character evidence, identification evidence, admissions, and judicial directions in criminal matters.

Question 2

Question 2 was a civil case and focused on the rule against hearsay, lay and expert opinions, evidentiary rules relating to the use of documents, summaries of evidence and documentary hearsay, illegally obtained evidence, judicial notice, the rules in *Browne v Dunn* and *Jones v Dunkel*, and standards of proof in civil cases

Characteristics of poor or average responses

Poor or average responses failed to identify key issues and/or misapplied the basic principles. For example: when the rule against hearsay applies, or who the “maker” is in relation to first-hand hearsay exceptions. They also failed to accurately assess the nuances of the expert opinion exception to the opinion rule, or clearly understand the distinction in reasoning between tendency and coincidence evidence.

More fundamentally, these answers also failed to provide sufficient analysis of the problem, merely identifying the issues and perhaps the relevant sections of the *Evidence Act 1995* (NSW), but without assessing the applicability of the relevant section to the facts.

Characteristics of very good or excellent responses

The few excellent responses and very good responses effectively identified most of the relevant issues, applied the relevant section and/or case law accurately, and provided a cogent analysis of the legal issues raised by the facts.

Common mistakes

As discussed above, common mistakes included: not understanding when a representation is or is not adduced for a hearsay purpose, or who the “maker” of a representation is in relation to the first-hand hearsay exceptions. Other common mistakes included simply ignoring significant issues, failing to recognise the use of s 81 as an exception to the hearsay rule, and

misunderstanding the application of the principles that apply to the right to silence within court and without. This is despite the fact that all of these issues were heavily emphasised in the lectures and the materials.

Time management was also an issue for some students.

Areas for improvement

Areas of improvement should focus on the matters discussed above, and also by developing a clear understanding that application of the law to the facts is essential in a good answer. This would likely be enhanced by a higher rate of personal attendance at class and further practice of issue identification and analysis.