



# UNIFORM EVIDENCE LAW GUIDEBOOK

*JOHN ANDERSON AND ANTHONY HOPKINS*

## CHAPTER 4: WITNESSES AND ADDUCING EVIDENCE

*ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY*

### **Witness: Trevor Ganglands**

- Read the instructions in the text at the end of Chapter Four carefully. You must keep the facts in issue squarely in your mind. At this stage, for the purpose of the criminal trial thread scenario, you are expected to be able to understand and apply the following sections of the Evidence Act: 28, 37, **38**, 43, **55**, **56**, **137**, 141, 142, 189 & **192**.
- You have been asked to make submissions in relation to specific sections and specific cases. Whilst other sections and cases will undoubtedly be important, you must ensure that you are on top of focus legislative provisions and cases. This means you must be ready for basic questions such as:
  - o What were the facts in that case? What were the facts in *issue*?
  - o Why was it the subject of appeal?
  - o How did the relevant section(s) come into play?
  - o What part of the relevant section(s) came into play?
  - o How were the sections construed?
  - o What considerations or factual circumstances were taken into account by the judge or judges?
- Once you have understood the relevant legislative provisions and focus cases, you should analyse the witness statement of Trevor Ganglands considering all information within the statement. You should repeatedly ask

yourself the questions: How is this evidence relevant to the facts in issue? How does it support or undermine my case? Is the probative value of this evidence outweighed by its prejudicial effect? Practical considerations should be borne in mind: Do you want to adduce the evidence? Do you want to object to it being adduced? If adduced, what impact will the evidence have upon the tribunal of fact? How can you maximise or minimise this impact?

- You will not have long to make submissions. The judge will want to get to the point. You must always know what you are asking the judge to do.
  
- **Specific Questions** that may be asked by judges in this exercise include?
  - o Which limbs of s 38 EA do you rely upon? How are the legislative requirements satisfied?
  - o What is the extent of the grant of leave that you are seeking?
  - o What do I have to consider when determining an application for a grant of leave?
  - o Is there any risk of unfair prejudice here? Or the potential for a mistrial?

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