



# UNIFORM EVIDENCE LAW GUIDEBOOK

*JOHN ANDERSON AND ANTHONY HOPKINS*

## CHAPTER 5: DOCUMENTARY AND REAL EVIDENCE

### *ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY*

#### **Witness: Sammy Teller**

- Read the instructions in the text at the end of Chapter Five 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, **47**, **48**, **55**, **56**, **137**, 141, 142 & 189.
- 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:
  - What were the facts in that case? What were the facts in *issue*?
  - Why was it the subject of appeal?
  - How did the relevant section(s) come into play?
  - What part of the relevant section(s) came into play?
  - How were the sections construed?
  - 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 Sammy Teller 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. Be ready to adapt and get to the nub of your argument. You must always know what you are asking the judge to do.
  
- **Specific Questions** that may be asked by judges in this exercise include?
  - What precisely is the evidence objected to/or sought to be adduced?
  - How is evidence of past robberies at the bank relevant? What facts in issue does it go to? Does it go to facts relevant to facts in issue?
  - Is the test of relevance undemanding?
  - Is there a risk of unfair prejudice? What is unfair prejudice?
  - What is the probative value of the evidence?
  - How is probative value to be determined?
  - How is probative value different to relevance?

© Anthony L Hopkins 2014