



UNIFORM EVIDENCE LAW GUIDEBOOK

JOHN ANDERSON AND ANTHONY HOPKINS

CHAPTER 7: HEARSAY AND EXCEPTIONS

ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY

Witness: Iya Heardim

- Read the instructions in the text at the end of Chapter Seven 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, 43, 55, 56, **59**, 62, **65**, 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 Iya Heardim considering all information within the statement. You should repeatedly ask yourself questions about the relevance of the evidence, how it supports or undermines your case, and whether its probative value is outweighed by its prejudicial effect? In addition, you must now identify any hearsay evidence

(see Page 141). Then determine whether it is first or second hand, keeping in mind that statement made to police is only an indication of what the witness will say in court. Then ask whether an exception or exceptions to the hearsay rule contained in s 65 EA applies. Continue to bear practical considerations in mind in deciding what evidence to adduce or object to.

- 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 are the previous representations?
 - What is the intended asserted fact of each representations?
 - What is the relevance of the previous representations?
 - Is the evidence hearsay? Is it first or second hand?
 - Which subsections and paragraphs of s 65 apply or might apply?
 - What are the circumstances in which the previous representation was made?
 - Was the previous representation made under the 'proximate pressure of events'? Is this an importance consideration?

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