

NATIONAL UNIVERSITY OF SINGAPORE

PART A OF THE SINGAPORE BAR EXAMINATIONS

SINGAPORE EVIDENCE LAW

November 2009

Time Allowed : 2 Hours

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**INSTRUCTIONS TO CANDIDATES**

1. This examination paper contains 5 questions and comprises 4 printed pages, inclusive of this cover page.
2. Answer three questions.
3. This is a closed book examination. You are supplied, together with this question paper, a copy of the Reading List and a 7-page document with the heading 'Selected Provisions of the Evidence Act and Criminal Procedure Code'. Please check that you have them on your desk.
4. In addition to the 2 hours of writing time, you have 10 minutes to read the questions.

Answer **three** questions

Question 1

'The common law similar facts rule is imported into Singapore via sections 14, 15 and 11(b) of the Evidence Act'. Discuss critically with reference to the relevant cases.

Question 2

'Section 107 of the Evidence Act, as it is judicially applied, unjustifiably undermines the presumption of innocence.' Do you agree? Give your reasons.

Question 3

Tan brings an action in tort against Ong. According to Tan, soon after he sat down at a table in a food court, Ong came up to Tan and accused him of having taken the table that he had reserved with a packet of tissue paper. When Tan ignored him, Ong became aggressive and shoved Tan off his seat, causing him to fall and injure his right leg.

Ong disputes Tan's account of the incident. According to Ong, Tan came up to him as he was taking his meal and tried to sell him some packets of tissue paper. When Ong declined to make a purchase, Tan got angry and started to bang his fist on the table. Ong was frightened and decided to get away. As Tan went after Ong, he slipped and fell. The floor had just been mopped and was very slippery.

*Should the trial judge allow Ong to call Dr Rafida, a psychologist, to give evidence of the respective personalities of Ong and Tan? In Dr Rafida's opinion, Ong is timid and shy whereas Tan has an aggressive personality. Can she testify that Ong is telling the truth about the incident whereas Tan's account is a fabrication?*

Wee formerly worked as a secretary at the law firm representing Tan in the present action. *Can Wee be called to testify that Tan was not limping on his first visit to the law firm and began limping only from the second visit?*

Vikram is the director of Yummy Ltd that owns the food court in question. Soon after the above incident, Vikram told his friend, Tom, about the incident. Tom is an in-house counsel at a different company. He told Vikram that, depending on the facts, Yummy Ltd could potentially be liable to Tan for his injuries. On hearing this, Vikram instructed Phua, the manager of the food court, to write a report on how cleaners generally go about their work, on whether they are instructed to put up warning signs after the floor is mopped and whether it was wet and slippery in the area where, and at the time when, Tan allegedly slipped and fell. Suppose Tan decides to abandon his action against Ong and is now suing Yummy Ltd instead. *Can Yummy Ltd claim privilege over Phua's report?*

Question 4

Yeo is charged with the offence of drug trafficking. He was caught in the following circumstances. An undercover police officer, Ahmad, approached Yeo soon after Yeo was discharged from the Drugs Rehabilitation Centre. Ahmad asked Yeo to get him some diamorphine (a controlled drug) and said that he was an addict and needed the drug badly to satisfy his craving. Yeo told Ahmad that he could not help him as he wanted to turn over a new leaf. Ahmad continued to pester Yeo, calling him two or three times daily. After two weeks of continuous pestering, Yeo gave in to Ahmad's request. He obtained the drug from his previous supplier and when he handed it over to Ahmad, he was immediately arrested by police officers who had been lying in wait. The prosecution wants to call Ahmad and the arresting officers to give evidence in court. *Has the trial court any discretion to exclude the evidence? Should it have any such discretion?*

At Yeo's trial, the prosecution seeks to adduce in evidence a statement obtained from him by a police officer under s 121 of the Criminal Procedure Code. Yeo claims that he made the statement only after he was told by the police officer who was questioning him that he had better tell the truth if he did not want to have his family thrown out of their home. Yeo also claimed that he was never informed that he could decline to say anything that would have a tendency to expose him to a criminal charge. *Is Yeo's statement admissible?*

Yeo, in reply to the notice served by the police under s 122(6) of the Criminal Procedure Code, stated only that he wanted to see his lawyer. *Can the court draw any adverse inference against Yeo from his s 122(6) statement?* At the trial, Yeo claimed that he did not get any drug for Ahmad and that the police had planted the drug on him.

Question 5

Lee and Teo are being tried jointly for the offence of murder. The prosecution's case is that Lee and Teo killed Song on 13 December 2008 in order to avoid having to pay a debt that they owed Song. The crime was committed at a back lane of a quiet neighbourhood.

Patrick lives near the place where the crime allegedly occurred. The prosecution intends to call him to give the following evidence: on the night in question, he heard someone shout out: 'Help, help, I have been stabbed by green dragon!' Patrick rushed out of his house and went to the person's aid. (The person was later identified as Song.) According to Patrick, Song was drunk. *Is Patrick's evidence admissible?* The prosecution will produce evidence to show that Lee and Teo are members of the Green Dragon secret society.

Song is an illegal money-lender. His ex-wife, Sally, used to help him to run his money-lending operation. A notebook is found in Song's house. It contains handwritten entries. Poh, a friend of Sally, is acquainted with the latter's handwriting as they have corresponded in the past. *Can the prosecution call Poh to testify that the entries in the notebook were written by*

*Sally?*

This entry appears on one page of the notebook: 'Loan of \$50,000 made to Lee and Teo on 13 July 2008. Lee and Teo to repay \$50,000 plus interest of \$20,000 on 13 December 2008.' Sally has migrated to Australia. *Is this entry in the notebook admissible?*

Teo gave this statement to the police after his arrest: 'On the night in question, Lee and I whacked Song because he insulted our friend. But we did not kill him.' *Discuss the admissibility of this statement against Teo and against Lee.*

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PART A OF THE SINGAPORE BAR EXAMINATION

2010

Evidence Law

November 2010 – Time Allowed 2 Hours

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**INSTRUCTIONS TO CANDIDATES**

1. This examination paper contains **TWO (2)** questions and comprises **THREE (3)** printed pages inclusive of this cover page.
2. Answer both Question 1 and Question 2.
3. Candidate should answer **ALL** parts of a question.
4. This is an **OPEN BOOK** examination.

## Question 1

Ang operates a meat stall at a market. He is on trial for the offence of murder. The victim, Tan, was the owner of the stall next to Ang's. Tan was found dead in the toilet of the market with an iron hook stuck deeply into his chest. Earlier in the day, Ang and Tan had a quarrel.

The prosecution proposes to call Wee as a witness. Wee was hired by Ang to help him out at his stall. *If you are the judge, would you allow Wee to testify to the following:*

'Ang is very bad-tempered. His personality is such that he is likely to react with violence when provoked. In my opinion, it is likely that Ang was the one who killed Tan. On the day the body was found, Ang had scolded Tan for chasing away his customers. This led to a heated quarrel. The two men had to be separated. I heard Ang mutter under his breath that Tan's days were numbered.'

The prosecution also seek to adduce evidence of the fact that Ang was involved in a fight five years ago at a different market where he had previously carried out his business. In this earlier incident, Ang had used a meat hook to defend himself against an attack by an owner of a stall. He was arrested and later released without charge. *Is this evidence admissible?*

The prosecution also wishes to admit in evidence a statement obtained from Ang under s 121 of the Criminal Procedure Code. Ang was told by the police officer questioning him: 'You are required to tell me everything.' Ang replied that he did not know why he was being detained. The police officer then told Ang: 'I know you're renting your brother's flat. This is against the law. If you still don't co-operate with me, I will get the HDB to confiscate your brother's flat.' After hearing this, Ang gave the statement in question. *Is the statement admissible under the Criminal Procedure Code? Would your answer be different under the Criminal Procedure Code 2010?*

The prosecution also seek to admit a statement obtained under s 122(6) of the Criminal Procedure Code. The defence objected to this on the ground that Ang gave the statement only after a 6-hour interrogation during which he was not given any food or drink. *Is this statement admissible under the Criminal Procedure Code? Would your answer be different under the Criminal Procedure Code 2010?*

At the trial, Ang raises the defence of accident. According to him, he had gone to the toilet to wash a meat hook. Ang ran into Tan in the toilet. They got into a quarrel. Tan slipped on the wet floor and accidentally fell into the hook that Ang was carrying. *Discuss the law on the burden and standard of proof in relation to these allegations raised by Ang.*

## Question 2

Rahim purported to rescind his contract with Loy on the ground of fraudulent misrepresentation by the latter.

Loy denied having made any fraudulent misrepresentation and threatened to sue Rahim for breach of contract. Rahim, who hated publicity, wrote a letter to Loy offering him a sum of money in return for Loy not making public their dispute. This letter was not headed 'without prejudice'. Loy replied in a letter headed 'without prejudice' in which he demanded a bigger sum of money. Rahim agreed to make payment but subsequently failed to do so. Loy then sued Rahim for breach of contract. *At the trial, can Loy admit in evidence this series of letters? Who carries the burden of proof on the issue of fraudulent misrepresentation and what is the standard of proof that applies?*

Loy had written a letter to his friend, Siva, before starting legal action against Rahim. Siva works as an in-house counsel at a large corporation. In the letter, Loy wrote:

'...In the pre-contractual discussion between Rahim and me, I told him some inaccurate things. He is now withdrawing from the contract. What remedies do I have in law? Should I engage a law firm and bring Rahim to court?'

Norma is the secretary of Siva. She happened to be Rahim's sister. Norma found the letter from Loy on Siva's desk, took a copy of it and gave it to Rahim. *Can Rahim adduce it as evidence against Loy? Can Loy stop Rahim from doing this?*

Poh was Rahim's assistant. Poh took notes of a pre-contractual meeting between Rahim and Loy. The notes recorded certain representations made by Loy. Poh has since left Rahim's employment and has taken a job overseas. *Can Rahim admit Poh's notes in evidence?*

-END OF PAPER-