

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR III – 2017

Law of Evidence and Criminal Procedure

(Three Hours)

Total Number of Questions: 07

Answer **FOUR (04)** questions and **no more**.
(Candidates will be penalized for illegible handwriting.)

1. Answer **one** of the following parts of this question:

(i) “The Bail Act, No. 30 of 1997 has many positive features which are beneficial to suspects and the administration of criminal justice in the country, though there are some provisions which seem to operate contrary to the guiding principles of the Act”.

Do you agree? Evaluate critically, with reference to decided cases and relevant provisions of the Bail Act and those relating to bail in the Code of Criminal Procedure Act, No. 15 of 1979 as amended.

(ii) “Criminal investigation is a legally regulated process, aimed at ascertaining the truth relating to an allegation that an offence has been committed, and if so, the identity of the perpetrator of the offence, his apprehension, and collection of investigational material which has the potential of being converted into evidence at future judicial proceedings.”

Discuss this statement with the aid of legal provisions contained in the Code of Criminal Procedure Act, No. 15 of 1979 relating to the conduct of criminal investigations.

2. Answer the following **both** parts of this question:

- (i) Critically evaluate the rationale underpinning the law relating to joinder of charges in Sri Lanka.
- (ii) Discuss the legality of joinder of charges in the following instances:
 - (a) A notorious criminal in the village of Akuressa is charged with the murder of five ladies living alone in the same area. The murders were committed on five consecutive days and the five ladies were not known to each other.
 - (b) Kamal, Sunil and Karuna entered Silva's house forcefully. Kamal was armed with a gun and removed cash to the value of Rs. 200,000 after threatening Silva, Sunil grabbed the gold necklace from Sunil's wife, Rani. Karuna dragged Silva's daughter Suganthi to a room and raped her. Kamal, Sunil and Karuna are charged in one indictment for the above offences.

3. Answer **one** of the following parts of this question:

- (i) Discuss, with reference to examples, the rules governing the relevancy of facts under sections 14 and 15 of the Evidence Ordinance and how do those rules differ in their application.
- (ii) "The Law of Evidence provides a set of rules which guarantees that adjudication of disputes by courts of law is based on material which has a guarantee of truth."

Discuss this statement with the aid of legal principles contained in the Law of Evidence.

- (iii) Write short notes on the following:
 - (a) Direct Evidence and Circumstantial Evidence
 - (b) Circumstantial Evidence and Hearsay Evidence
 - (c) Original Evidence (Best Evidence) and Secondary Evidence

4. Answer **one** of the following parts of this question:

(i) "A confession by an accused person is generally admissible through the inclusionary principle of admissibility. However, confessions may not be proved in certain limited circumstances in criminal proceedings due to an exclusionary principle."

Critically examine, with reference to relevant statutory provisions and decided cases of Sri Lanka, the validity of the above statement and the rationale underpinning the exclusionary principle.

(ii) The identity of the perpetrator of an offence is a relevant fact. Thus, ascertaining the identity of the perpetrator is an important component of any criminal investigation.

Evaluate the criminal investigational steps carried out through a judicial process aimed at determining the identity of the perpetrator of an offence.

5. Answer **one** of the following parts of this question:

(a) "The Courts of Sri Lanka have applied the principle known as the *Allenborough Dictum* in *Rex vs. Lord Cochrane* hand in hand with the principle set out in *Woolvemington vs. DPP*."

Critically examine the impact made by the said principles on the overall burden of proof embodied in section 101 of the Evidence Ordinance.

(b) Critically discuss, with the aid of case law, the legal principles applicable in the judicial evaluation of circumstantial evidence.

6. "Arresting a suspected perpetrator of a cognizable offence is an integral part of any criminal investigation."

In light of the above, discuss, with reference to its significance to investigators and its impact on the arrested person's fundamental rights, the circumstances in which a person may be arrested without a warrant and what would amount to an arrest. Support your answer with a discussion of the relevant case law.

7. Latha with grievous injuries was found lying on a threshing floor. Dharmasena and Sumathipala approached her and the former asked her as to what happened. Latha feebly uttered the words "*I was raped; I was severely assaulted when I resisted*". Sumathipala then asked her who the culprit was. She could not answer since the injuries caused to the throat have worsened. Then again Sumathipala asked her "*Was it Bonnie Mahatthaya who did this?*" Latha made an affirmative nod to this and soon afterwards she died.

A week prior to the incident, Latha had told Sumathipala that Bonnie Mahatthaya had made improper advances to her and requested her to have sex with him, which she had contemptuously refused. At the subsequent trial against Bonnie Mahatthaya for the rape and murder of Latha, the Prosecution wants to lead these statements and gesture made by Latha to Dharmasena and Sumathipala at the scene and the statement about the improper advances made a week prior to the incident. The Defence strenuously objects to the said pieces of evidence on the basis that the Evidence Ordinance does not permit their relevancy and admissibility.

Discuss, with reference to the relevant statutory provisions and the case law, the validity of the claims of the Prosecution and the objections of the Defence.
