



ANU LAW STUDENTS' SOCIETY

LAWS2207 Evidence Semester 2, 2010

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LAWS2207 Evidence – Sem 2, 2010

QA: 20/25

Q A1: 4/5 marks

1. That he was misled by D as to qualities

Relevant to FII of establishing misleading conduct causing loss/damage: s 55, 56. [✓]

2. Dalton's reply: "It's a beauty"

Relevant to establishing FII of misleading conduct/false rep: s55, 56 – shows statement re: standard, quality and value of horse.

Although a prior representation by D, not adduced to prove truth of D's intended assertions so s 59 won't apply to exclude, used to prove that statements made. [✓]

Also admission by D adverse to interest ∴ hearsay rule/opinion rule won't apply: s 81(1), as A observed the rep: s 82(a) [✓]

3. He was probably gullible – thought D would be truthful

This is opinion but not adduced to prove opinion true thus s 76 won't arise. Relevant to establishing A relied on M's representations and thus suffered damage/loss. [✓]

4. Albert's feeling depression/lethargic

Not relevant to FII as personal injury is not included in "damages or loss". Not relevant: s55 and not admissible: s56(2) [✓] Would be prejudicial to D if used anyway – s 135 discretionary exclusion, low PV as not related closely to FII (damages/loss)

Q A2 – 4/5 marks

A's statement re: growing up on farm

Relevant to FII of whether A actually believed and relied upon D's conduct – ie whether damage/loss caused by D: s55[✓]. Also relevant to credibility, as D as witness - Pt 3. 7 won't apply as it's not only about credibility thus not cred evidence: s101A, Dictionary.

That limping would be visible

This is opinion – not admissible as proof of fact: s 76. [✓] But arguably only adduced here to show A's own belief in being able to tell it was limping – thus going to reliance. [✓]

Otherwise wholly/substantially based on specialised knowledge of horses gained from A's farm experience, thus opinion would not apply: s 79(a). [✓]

"No, that is not true"

This is denial relevant to FII of whether reps made. [✓]

He said it would compete will in prize races

Not adduced for truth of prior rep or opinion, merely effect on listener so s59/s76 won't exclude.

Also admission by D [✓] so s76/59 don't apply: s 81(1).

"He lied"

This is opinion thus not admissible to prove opinion as fact: s76. Possibly also misleading and confusion or unfairly prejudicial to D: s135 exclusion may be appropriate. [✓]
s 79 exception? Based on A's special knowledge of horses (see above) – this opinion re: falsity of D's rep would be based on expertise to extent that A used expertise to decide that horses are not healthy. But misleading. [✓]

A3: 4/5 marks

What Albert said on phone

Relevant to FII of whether A heard reps by previous owner (D) and whether relied on them causing loss. [✓]

Hearsay of previous rep by A, intending to assert that he had spoken to prior owner and fortune would be made, thus not admissible to prove asserted fact: s59. But FHH as matter available and has been called as witness thus hearsay rule won't apply: s 64(3)(b) [✓].

Not adduced as proof that what prior rep asserted was true – so no hearsay issues re the prior owner's assertions (as A relayed to B). [✓]

B having immediate doubts re horse limping

Relevant to FII whether D's statements were misleading/false (untrue) but also to extent that loss caused by D's statement as A should have realised horse was not OK. [✓]

However opinion so not admissible as proof of opinion.

Limping opinion OK as lay opinion based on what she saw and necessary to get account: s 78(b) but opinion re racing/fitness only be admissible if she had specialised s 79 knowledge. [✓]

She thinks bro easily impressed

Relevant to whether A relied on D by establishing tendency to rely on city types: s97(1)(a) notice and must have SPV: s 97(1)(b). Probably not SPV due to limited cogency of evidence (only opinion) and not so strong inference as to tendency: *acara*, so not “more than mere relevance”: *R v Locker*.

Regardless opinion and excludable: s 76. [✓]

A4: 4.5/5 marks

Relevant to FII to establish whether D's statements were false but also to establish D's defence – that he “reasonably relied” on info supplied by other person: s 55, 56. [✓]

Hearsay of H's rep but he is available and witness, so OK: s 64(3)(a). [**also s 69?**]

“He found health problems with horse”

This is opinion – not admissible as truth: s 76 but possible specialised opinion if C has specialised opinion if C has specialised knowledge on horse health through training but also consultancy experience AND opinion wholly/substantially based on knowledge: s 79(1). [✓]

Here – can still have spec. knowledge even if not official institution – based on training/experience. Unclear whether horse health may be outside this training/experience which seems to be on horse handling – if so – not admissible under s 79.

Further, must establish factual substratum and how knowledge lead to conclusion of health – *Makita* – unclear on facts. Could be in the written report. If so and based on knowledge – s79(1) was except.

Even if not admissible as proof of truth of opinion, still relevant and admissible that he told Dalton [✓] as D's defence is that he was told he was healthy and it would be reasonable to rely on such an opinion, even if cannot be sure it's true, since it was given by a highly respected horse breeder. [✓] [**Yes, this could be a non-opinion way around s 79**].

A5: 3.5/5 marks

E's evidence that 3 have sold fake memo

Relevant possibly to tendency to make false reps but wouldn't meet s 97(1) sig probative value threshold because selling fake memorabilia isn't a tendency related to FII: *Jacara*.

∴ Only relevant to credibility evidence going to A's credibility: s 101A(a) or s101A(b), thus s102 excludes this as this is exam-in-chief and is credibility evidence [**shows dishonesty**]. [✓]

Regardless evidence should be excluded as obtained in contravention of impropriety (bribing NSW trading office), considering low desirability of admission (s138(3)(b) not important, s 138(3)(a) low PV) (no PV) vs high undesirability.

Based on ease of getting info without impropriety: s 138(3)(h). Thus excluded under s138.

E's cross that D swore at him

Possibly relevant to D's credibility as witness: s101A, s55(2)(a) and adduced in cross: s103 – probably unable to substantially affect assessment of D's credibility: s103 ∴ not admissible.

Hearsay but not offered to prove what D intended to assert.

Prejudicial to D – s 135 exclusion possible.