

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005.

TITLE OF PAPER : LAW OF EVIDENCE

COURSE CODE : DL 031

TIME ALLOWED : THREE (3) HOURS

1. ANSWER ANY FOUR (4) QUESTIONS OF YOUR CHOICE
2. READ AND UNDERSTAND WHAT THE QUESTIONS REQUIRES OF YOU.
3. YOUR ANSWER SHOULD BE WELL ORGANIZED
4. ALL QUESTIONS CARRY EQUAL MARKS

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR

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(FINAL EXAMINATION PAPER)

QUESTION 1.

A sues B for breach of contract. B disputes the terms of the contract which were recorded in a document which was signed by both A and B. B avers that he is not in breach. How should A seek relief from the court?

QUESTION 2

Sipho and Sifiso entered into a contract in terms of which Sifiso acted as a debt collector for Sipho. Later Sipho failed to pay Sifiso's fees as a result of which Sipho was charged with an offence related to such failure.

While cross-examining Sifiso, Sipho suggested that Sifiso embezzled some of the money that he collected under the contract and that this led to his failure to pay Sifiso's fees.

When Sipho gave evidence in his defence the prosecutor sought to cross examine him on his bad character.

Should the Judge allow such cross-examination of Sipho?

Give a fully reasoned answer

[25 MARKS]

QUESTION 3

Discuss some of the leading cases in which the courts have admitted/excluded similar fact evidence. In your opinion what is the rationale for the admission/exclusion of such evidence?

[25 MARKS]

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QUESTION 4

Pillay was charged and convicted of robbery by the Mbabane Magistrate.

Two years later Swazi Times Magazine published a report about Pillay, describing him as “a robber and exconvict”. Pillay brought a civil suit against Swazi Times Magazine claiming damages for defamation. Attorney for defendant (Magazine) sought to introduce into evidence the Magistrates Court criminal record wherein Pillay was convicted of robbery.

Discuss fully whether such evidence is admissible. [25 MARKS]

QUESTION 5.

Distinguish between competency, compellability and privilege with regard to witnesses and give examples to illustrate [25 MARKS]

QUESTION 6

- (a) Explain what is meant by hearsay evidence [10 MARKS]
- (b) On her death bed X tells Y that the man they have been living with all along is not his father; that his father is Z who stays in Durban. Would such a statement be admissible in evidence? Discuss [15 MARKS]

[25 MARKS]

QUESTION 7.

- (a) What is “a trial within’ a trial? [10 MARKS]
- (b) X confesses to the murder of Y. The Magistrate duly records X’s confession. What are the requirements for the admissibility of X’s confession into evidence. Discuss fully. [15 MARKS]

[25 MARKS]