

Course Code: L402/L302 (M) 2005

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **LAW OF EVIDENCE**

COURSE CODE : **L402/L302**

TIME ALLOWED : **THREE (3) HOURS**

TOTAL MARKS : **100**

INSTRUCTIONS :

1. **ANSWER ONLY FOUR (4) QUESTIONS.**
2. **PLEASE ENSURE THAT THE TIME YOU DEVOTE TO EACH ANSWER IS PROPORTIONATE TO THE MARKS ALLOTTED.**
3. **WHERE APPROPRIATE, REFERENCE MUST BE MADE TO RELEVANT CASE LAW.**

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QUESTION 1

Shabangu is charged with rape. In his defence, Shabangu submits that as a result of a sexually transmitted disease he has become impotent. He also submits that on account of his impotence he has become an alcoholic. In rebuttal, the prosecution introduces evidence showing that Shabangu has had sexual intercourse with many women as from the time he alleges he became impotent, and with one particular woman shortly before the alleged rape. Mr. Shabangu's counsel objects to the introduction of this evidence on the grounds of its irrelevance and further that such evidence tends to show that the accused is of bad character which is contrary to Section 248 of the Criminal Procedure and Evidence Act 67 of 1938.

With these facts in mind, discuss fully whether or not the trial judge should allow the admission of such evidence from the prosecution. **[25 MARKS]**

QUESTION 2

Vusi is intensely in love with Cindy. Vusi's friend tells him that he saw Cindy at a night club with Musa and that it is rumoured that Cindy went to Musa's apartment afterwards. Vusi confronts Cindy at her home. An argument ensues and in blind rage Vusi shoots Cindy. Cindy's mother rushes into the room and screams: "What happened?" All Vusi can do is shake his head and say: "I don't know what happened. I can't remember". Cindy dies on the way to hospital and Vusi is charged with murder. Vusi's counsel raises automatism as a defence. One of the defence's main witnesses is Dr. Dube who is a medically qualified psychiatrist who has examined Vusi and is called to testify that due to Vusi's state of rage he did not intentionally kill Cindy. With these facts in mind answer the following questions.

- (a) State the procedure that must be used to call Dr. Dube as an expert witness. (5)
- (b) Describe the manner in which counsel for the defence must satisfy the court that Dr. Dube is sufficiently qualified to give expert testimony. (10)
- (c) May Dr. Dube give evidence that in his opinion Vusi is unlikely to have committed the crime of murder intentionally? Discuss. (10)

[25 MARKS]

QUESTION 3

The deceased died as a direct result of a stabwound which penetrated his heart and which has been alleged inflicted by the accused between 22:00 and 22:45 on the night of 18 April 2004. It was common cause that between 23:00 and 24:00 of the same night, the accused while gambling at a house some 2000 meters from the location where the deceased had been stabbed, staked and lost a wrist-watch conclusively shown to be the property of the deceased.

The main witness for the Crown was Vusi who testified to being in the continuous company of the accused until after the accused had gambled away the wrist-watch belonging to the deceased. Vusi also deposed to being an eye witness to the accused stabbing the deceased. According to Vusi, the accused stabbed the deceased quite deliberately with the intention of robbing him.

In the course of Vusi's evidence in chief, the Crown sought to lead evidence of two knife-assaults alleged committed by the accused in the presence of Vusi at approximately 21:15 of the same evening, once more with the intention of robbing the victims who were identified as Vilakati and Shongwe, respectively. Defence counsel objected to this evidence and the objection was upheld. However, when the accused gave evidence in his own defence, he denied that he had ever been near the scene of the crime that night and denied all knowledge of how the deceased had met his death. After the defence case had been closed, the Crown applied for leave to call evidence in rebuttal. The witnesses sought were Vilakati and Shongwe. Once more defence counsel resisted this application.

On the basis of these facts, discuss whether or not the evidence of Vilakati and Shongwe should be admitted by the trial judge.

[25 MARKS]

QUESTION 4

Answer the following questions.

- (a) Explain what is meant by hearsay evidence. (5)
- (b) State **five** reasons for excluding hearsay evidence. (5)
- (c) Discuss the circumstances in which hearsay evidence may be admitted in the courts of Swaziland. (15)

[25 MARKS]

QUESTION 5

Sabelo hires Thabo to murder his business competitor, Vuyo. Before his arrest, Thabo tells his wife about certain incidences concerning the murder of Vuyo. After his arrest, Thabo discloses information relating to the murder of Vuyo to his attorney. With these facts in mind, answer the following questions.

- (a) The prosecution calls Thabo's wife as a witness to which Thabo's counsel objects. Will this objection be upheld by the court? Give reasons for your answer. (10)
- (b) The prosecution calls Thabo's attorney as a witness to which Thabo's counsel objects. Will this objection be upheld by the court? Give reasons for your answer. (10)
- (c) If a cleaner is in Thabo's attorney office and hears the disclosure of the crime made by Thabo to his attorney, may the prosecution call the cleaner as a witness? Give reasons for your answer. (5)

[25 MARKS]

QUESTION 6

- (a) Jabu is a journalist who has written extensively about the crime syndicates that distribute drugs in Swaziland. During a police operation, many of these criminals are arrested. Jabu is subpoenaed by the prosecution to give evidence against these criminals. He refuses to testify on the grounds that he would be forced to disclose his sources of information and thereby endanger the lives of those persons who gave him the information. With these facts in mind, answer the following question
- (i) May Jabu refuse to testify? (6)
 - (ii) If Jabu does eventually refuse to testify, what action may the court take? (5)
- (b) Explain what is meant by “real evidence” and discuss the rules regulating the admissibility of sound recordings and videos. (7)
- (c) Discuss judicial notice in respect of
- (i) statutes and delegated legislation (5)
 - (ii) common law. (2)

(7)

[25 MARKS]**QUESTION 7**

There are certain standards and burdens of proof and evidential duties in criminal as well as civil trials. Discuss and distinguish between the legal burden and the evidential burden.