

Course Code: L402/L302 (S) 2005

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 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

- (a) Mrs. Magagula is a bookkeeper who has given over twenty years of outstanding and honest service to a firm of attorneys. To the senior partner's dismay, he discovers that Mrs Magagula has embezzled E81 000 out of clients' trust funds. He has no option but to lay criminal charges. Mrs. Magagula is remorseful before the court. She says that she did not intend to embezzle the money and meant to pay it back; she explains that her grandchild is suffering from a serious heart condition and that she needed the money to for medical expenses in order to keep the child alive. With these facts in mind, discuss whether Mrs. Magagula may give evidence of good character. (10)
- (b) Discuss the situations in which the general rule on character evidence does not apply in terms of the provisions of Section 248 of the Criminal Procedure and Evidence Act 67 of 1938. (15)
- [25 MARKS]**

QUESTION 2

- (a) Discuss critically the general formulation of the rule regarding the exclusion of opinion evidence. (15)
- (b) Discuss the manner in which disputed fingerprints and palm prints may be proved by evidence of opinion. (10)
- [25 MARKS]**

QUESTION 3

- (a) Discuss the rationale for excluding similar-fact evidence. [8]
- (b) With specific reference to relevant decided cases, discuss the following instances where the courts have admitted similar-fact evidence -
- (i) acts part of a transaction or *res gestae*; [4]
 - (ii) previous dealings; [2]
 - (iii) presence at a place, possession of a weapon; [5]
 - (iv) design or system. [6]
- [17]

QUESTION 4

With regard to hearsay evidence, the following was stated in *S v Holshausen* 1984 4 SA 852 (A): "Oral or written statements made by persons who are not parties and are not called as witnesses are inadmissible to prove the truth of the matters stated ...".

Discuss this statement critically with specific reference to decided cases and relevant statutory provisions.

QUESTION 5

Answer the following questions.

- (a) Explain the nature of the attorney-client privilege. (5)
- (b) Set out the provisions of Section 252 of the Criminal Procedure and Evidence Act 67 of 1938 in respect of the privilege of professional advisors. (5)
- (c) Discuss the following elements of the privilege between attorney and client -
- (i) professional capacity; (6)
 - (ii) confidentiality; (5)
 - (iii) the privilege must be claimed. (4)

[15]

[25 MARKS]**QUESTION 6**

- (a) Vusi and Thandi are married to each other. Nana is their nine year old daughter. On a Saturday afternoon, Vusi and his friend Mphumi are watching soccer at Vusi's house. Both have been drinking heavily. Thandi confronts Vusi and Mphumi and tells them to either stop drinking or to get out of the house. Vusi becomes angry and assaults Thandi. Thandi is a strong woman and fights back. Vusi calls Mphumi to help him. Mphumi also assaults Thandi. Nana tries to stop the men from assaulting her mother. Eventually she runs to their neighbours for help. Both Vusi and Mphumi are charged with the crime of assault and are co-accused at the same trial. With these facts in mind answer the following questions:
- (i) May Nana be called as a witness? (6)
 - (ii) In what circumstances may the prosecution call Mphumi to give evidence against Vusi? (5)
 - (iii) May the prosecution call Thandi to give evidence against Vusi? (6)
- (b) Name five (5) instances when secondary evidence of a document is admissible. (5)

[25 MARKS]**QUESTION 7**

Sibusiso and Zandile decide to eat out at a restaurant. As Sibusiso is in the process of parking his car in an underground parking lot, the couple are confronted by Tsotsi Mabena, who demands the keys of Sibusiso's motor vehicle. Sibusiso attempts to overpower Mabena. In the ensuing struggle, Mabena shoots and kills Sibusiso. A few days later Mabena is arrested and charged with the murder of Sibusiso. Zandile is the only witness. With these facts in mind, answer the following questions.

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- (a) Mabena refuses to appoint counsel to defend him. Presuming that you are the presiding officer, describe how you would explain to Mabena the interaction between the onus of proof and the evidentiary burden in order to convince him that he needs to appoint counsel to defend him. (15)
- (b) As the presiding officer, explain the cautionary rules that you would apply in order to assess Zandile's evidence. (10)