

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER 2006

<u>TITLE OF PAPER</u>	EVIDENCE
<u>COURSE CODE</u>	L302
<u>TIME ALLOWED</u>	THREE (3) HOURS
<u>TOTAL MARKS</u>	100

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THIS EXAMINATION PAPER.

Answer ONLY FOUR questions.

- (a) Please ensure that the time you devote to each answer is proportionate to the marks allotted.
- (b) Where appropriate, **reference must be made to relevant case law.**

This paper consists of 4 pages.

QUESTION 1 (25 marks)

- (a) Discuss the basic concepts regarding the meaning of the term "evidence". (10)
- (b) With specific reference to authority, discuss the following
- (i) the meaning of relevance; (8)
 - (ii) the distinction between logical and legal relevance. (7)
- [15]

QUESTION 2 (25 marks)

- (a) An attorney is on trial for contempt of court in that it is alleged that he was rude to the bench. With these basic facts in mind, answer the following questions.
- (i) May the prosecution lead evidence to show that the accused had been rude to the bench on previous occasions? (8)
 - (ii) Would your answer to (i) differ if the accused led evidence to the effect that he is always respectful to the bench? (5)
- [13]
- (b) Discuss *Delew v Town Council of Springs* 1945 TPD 128 in regard to the admissibility of similar fact evidence. (4)
- (c) With specific reference to case law, discuss the admissibility of similar fact evidence when it is used to prove a design or system. (8)

QUESTION 3 (25 marks)

Answer the following questions in regard to the evidence of an expert.

- (a) Describe the circumstances in which a person will be regarded as an expert witness. (4)
- (d) Discuss the factors that a court will take into consideration when it is assessing the qualifications of an expert witness. (9)
- (e) Discuss the admissibility of evidence regarding handwriting. (12)

QUESTION 4 (25 marks)

B is charged with the murder of C, on whom B had procured an abortion. Before her death, C made the following statement to the nurse who was attending to her: "I am going to die. B is the cause of it all". Soon after making this statement, C died. Immediately after C's death, the nurse informed D, a medical doctor, about the statement made by C. Medical evidence supports the fact that at the time of making this statement, C was in fact dying. On the basis of these facts, answer the following questions.

- (a) Discuss whether the evidence of the nurse regarding the statement made by C is admissible. (15)
- (b) Discuss whether the evidence of D regarding the statement made to him by C is admissible. (5)
- (c) Discuss whether the evidence of D in regard to the fact that the nurse had told him that C had made the statement is admissible. (5)

QUESTION 5 (25 marks)

- (a) X is the accused in a murder trial. The prosecutor asks him a question that tends to incriminate X. With these facts in mind, answer the following questions. Give reasons for your answer in each instance.

- (i) Is X obliged to answer the question put to him by the prosecution? (4)
 - (ii) May X refuse to be sworn as a witness in anticipation that an incriminating question will be put to him? (3)
 - (iii) What is the role of the presiding officer if X is unrepresented? (3)
- [10]

- (b) Y is in custody on a charge of robbery with the intent to do bodily harm. Y's friend, X, visits him in prison. Y asks X to tell his wife that he did commit the crime but that he did it because he wanted to provide for her. X is subsequently called to give evidence for the prosecution. Y objects to X's testimony on the ground that the communication was intended for his wife and that the communication between himself and his wife is privileged.

- (i) Would a court uphold Y's objection? (5)
 - (ii) Would your answer to (i) differ if, subsequent to this communication, Y was divorced from his wife? (3)
- [8]

- (c) C is the client and D is the attorney. During a consultation with D, C discloses that he obtained inside information about the listing of shares on the Swaziland Stock Exchange, purchased these shares and, as a result, made a massive profit. C is subsequently charged for insider trading under the provisions of the Companies Act. With these facts in mind, answer the following questions. Give reasons for your answer in each instance.
- (i) If D is called as a witness, may he claim privilege in respect of the communication made to him by C? (5)
 - (ii) If this information about insider trading was made to D during a consultation with C's agent, could C claim privilege if the agent was called as a witness regarding this disclosure? (3)
- [7]

QUESTION 6 (25 marks)

- (a) Jabu and Vusi are co-accused at a joint trial for murder, each having separate defence counsel. With these basic facts in mind, answer the following questions.
- (i) Is Jabu a competent witness for the defence? (3)
 - (ii) Is Vusi a compellable witness to give evidence on behalf of Jabu? (3)
 - (iii) Name four circumstances in terms of which Vusi would be a competent witness for the prosecution. (4)
- [10]
- (b) Discuss the best evidence rule with specific reference to Swazi case law and the provisions of the Criminal Procedure and Evidence Act of 1938. (10)
- (c) Discuss judicial notice of statutes and delegated legislation. (5)

QUESTION 7 (25 marks)

- (a) Discuss the legal burden as distinguished from the evidentiary burden. (10)
- (b) Discuss the cautionary rule as it applies to a single witness. (15)