

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER 2007

<u>TITLE OF PAPER</u>	LAW OF 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 5 pages.

QUESTION 1 (25 marks)

- CASES*
- (a) With specific reference to decided ^{CASES} discuss relevance for the purposes of the law of evidence in regard to the following
- (i) the meaning of relevance; (5)
 - (ii) the distinction between logical and legal relevance. (10)
- [15]
- (b) Discuss the interpretation and application of section 248 of the Criminal Procedure and Evidence Act 67 of 1938 in regard to character evidence. (10)

QUESTION 2 (25 marks)

- (a) "The relevance of similar-fact evidence depends on the argument that the same conditions are likely to produce the same results. This statement is only of theoretical value since in practice it is not often possible to satisfy the court that the conditions on both occasions were sufficiently similar."
- Discuss this statement with specific reference to decided cases. (10)
- (b) With specific reference to decided cases, discuss the evidence of an expert witness in regard to
- (i) identity; (4)
 - (ii) design or system. (6)
- [10]
- (c) Explain the traditional approach to opinion evidence. (5)

QUESTION 3 (25 marks)

- With specific reference to decided cases, discuss the evidence of an expert witness in regard to
- (i) the qualifications of the expert witness; (8)
 - (ii) the scope of the evidence that may be given by an expert witness. (7)
 - (iii) the admissibility of expert evidence in regard to fingerprints. (10)

QUESTION 4 (25 marks)

- (a) State the reasons for the exclusion of hearsay evidence. (5)
- (b) "Statements made by a non-witness are not always hearsay." Per Watermeyer JA in *R v Miller* 1939 AD 106 at 119.

With reference to case law, discuss this statement critically. (10)

- (c) Discuss the decision in *R v Obert Sithembiso* Criminal Case No 41/2000 (HC) unreported at 7 in regard to the admissibility of computer evidence in Swaziland. (5)
- (d) B is *umusumphe*. B has a very close relationship with his grandson, R. During his lifetime, B tells R that the Muti Muti River and not the Folozi River is the boundary between chiefdom X and chiefdom Y. After B's death a dispute arises between chiefdom X and chiefdom Y regarding the boundary between the two chieftaincies. The matter is eventually taken to the High Court. R is called as a witness. Discuss whether R's evidence regarding B's statement concerning the boundary between the chieftaincies, is admissible. (5)

QUESTION 5 (25 marks)

Sabelo hires Thabo to murder his business competitor, Vuyo. Before his arrest, Thabo tells his wife about certain incidences concerning the murder of Vuyo. Sabelo is also charged with the murder of Vuyo. With these facts in mind, answer the following questions, giving reasons for each answer.

- (a) The prosecution calls Thabo's wife as a witness and puts a question to her regarding Thabo's admissions to her concerning the murder of Vuyo. Without consulting Thabo's wife, Thabo's counsel objects to this question. Will this objection be upheld by the court? (8)
- (b) Would your answer to (a) above remain the same, if Thabo and his wife were divorced at the time of the trial? (3)
- (c) Is Thabo obliged to answer a question put to him by the prosecution regarding a charge of assault against Thabo, which is still being investigated? (4)
- (d) Is Thabo's wife obliged to answer the question put by the prosecution to Thabo in (c) above? (4)

- (e) If called as a witness by the prosecution, would Sabelo's attorney be obliged to answer a question put to him by the prosecution regarding a document given to him by Sabelo that implicates Thabo in the murder of Vuyo? (6)

QUESTION 6 (25 marks)

Vusi and Thandi are unhappily married to each other since Vusi is extremely abusive to Thandi and their six-year old daughter, Busi. One Saturday afternoon Vusi and his friend Bongani spend their time at Vusi's home drinking while they watch sport on the TV. Because Busi is sick, Thandi asks Vusi to turn the sound down on the TV and to talk quietly. Vusi flies into a rage and says that both Thandi and Busi must get out of the house. Thandi refuses. Vusi then rushes out to Thandi's car and starts smashing it with a hammer. Bongani joins in by using an axe. This is witnessed by both Thandi and Busi as well as by their neighbour, Mr Vilakati, who is very friendly with Vusi. Vusi and Bongani are both charged with malicious damage to property and their trials are joined. With these facts in mind, answer the following questions.

- (a) Describe the procedure that the court may use if Mr Vilakati is subpoenaed to give evidence for the prosecution but refuses to do so on the ground that Vusi is his best friend. (6)
- (b) Explain whether Vusi is a competent and compellable witness for the defence. (2)
- (c) Explain whether Vusi is a competent and compellable witness to give evidence on behalf of Bongani. (2)
- (d) Explain the circumstances in which Busi would be regarded as a competent witness. (5)
- (e) Determine whether Thandi is a competent witness for the defence. (1)
- (f) Determine whether your answer to (e) above would differ if Vusi and Thandi were married to each other according to Swazi Law and Custom. (1)
- (g) Explain the circumstances in which Bogani could be called as a witness for the prosecution to give evidence against Vusi. (8)

QUESTION 7 (25 marks)

- (a) Name **five** instances when secondary evidence of a document is admissible. (5)
- (b) Discuss judicial notice in regard to matters of local notoriety. (5)
- (c) Discuss the cautionary rule in regard to sexual cases. (5)
- (d) Discuss the legal burden as distinguished from the evidentiary burden of rebutting a *prima facie* case made by the opposite party. (10)