

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY 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 4 pages.

QUESTION 1 (25 marks)

- (a) With reference to case law, distinguish between logical relevance and legal relevance. (10)
- (b) In regard to character evidence, discuss
- (i) the protection afforded by section 248 of the Criminal Procedure and Evidence Act of 1938; (10)
 - (ii) the circumstances in terms of which the "shield" is lifted under the provisions of section 248(a). (5)
- [15]

QUESTION 2 (25 marks)

- (a) Discuss the rationale for excluding similar-fact evidence. (10)
- (b) With specific reference to decided cases, discuss the following instances where the courts have admitted similar-fact evidence -
- (i) presence at a place, possession of a weapon; (4)
 - (ii) acts of preparation; (4)
 - (iii) design or system. (7)
- [15]

QUESTION 3 (25 marks)

- (a) Discuss critically the general formulation of the rule regarding the exclusion of opinion evidence. (15)
- (b) With reference to *S v Blythe Monanthane* 11978 SLR 497, discuss the scope of the evidence given by an expert. (5)
- (c) Discuss the manner in which handwriting may be proved by evidence of opinion. (5)

QUESTION 4 (25 marks)

S is T's grandfather. S was born in Siteki in 1910. During S's lifetime, S and T had many long discussions about the history of Siteki as well as the various families that lived in Siteki. Shortly before his death, S and T had a long discussion about how the boundaries of Siteki municipal area had been demarcated as well as the various beacons that identified these boundaries. Not long afterwards, T had an in-depth discussion with V about what S had told him about the boundaries of the Siteki municipal area. V is only T's friend and has no blood relationship with T's family. Some three months after S's death a dispute arises as to whether the Muti Muti Nature Reserve falls within the municipal boundaries of Siteki. The resolution of this

dispute affects the lives of many of the inhabitants of Siteki. Eventually the matter is taken to court. With these facts in mind, answer the following questions.

- (a) Discuss whether the evidence of the T regarding the statement made by S about the municipal boundaries of Siteki, is admissible. (15)
- (b) Discuss whether the evidence of V regarding the truth of the statement made by S is admissible. (5)
- (c) Discuss whether the evidence of V in regard to the fact that the T had told him that S had made the statement is admissible. (5)

QUESTION 5 (25 marks)

S hires T to assassinate his business competitor, V. Directly after murdering V, T goes home. His wife notice small specks of blood on T shirt. T tells his wife that he murdered V and shows her the revolver that he used as well as the E10 000 that S paid him in cash to commit the murder. Both S and T are arrested for the murder of V and tried as co-accuse at a joint trial. Shortly before the trial, T discloses information relating to the murder of V to his attorney. With these facts in mind, answer the following questions.

- (a) May T refuse to answer a question put to him by the prosecution that tends to incriminate him? (4)
- (b) May T refuse to take the oath in anticipation that the prosecution will put an incriminating question to him? (3)
- (c) What approach will the court take in order to determine the scope of T's privilege? (6)
- (d) May the prosecution calls T's wife as a witness if T's wife has divorced him before the trial? (6)
- (e) If S calls T's attorney as a witness, may T's attorney claim the privilege? (6)

QUESTION 6 (25 marks)

- (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 questions

- (i) May Jabu refuse to testify? (5)
 - (ii) If Jabu does eventually refuse to testify, what action may the court take? (5)
- [10]

(b) Discuss the rules of evidence that apply in respect of the production of an original document. (10)

(c) Explain what is meant by the term "judicial notice". (5)

QUESTION 7 (25 marks)

(a) You are a lecturer in the Department of Law at UNISWA, where you teach the Law of Evidence. Prepare a lecture on the distinction between the legal burden and the evidentiary burden. (15)

(b) Explain the cautionary rules that apply in accomplices. (10)