

**UNIVERSITY OF SWAZILAND**

**DEPARTMENT OF LAW**

**FINAL EXAMINATION PAPER 2008**

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

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**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.

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**QUESTION 1 (25 marks)**

- (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 the term "relevance" as it applies to the admissibility of evidence; (6)
  - (ii) the distinction between logical and legal relevance. (7)
- [13]
- (b) 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 tending to show that the accused had been rude to the bench on previous occasions? (7)
  - (ii) Would your answer to (i) differ if the accused led evidence to the effect that he is always respectful to the bench? (5)
- [12]

**QUESTION 2 (25 marks)**

- (a) Discuss *Delew v Town Council of Springs* 1945 TPD 128 and other related cases, in regard to the admissibility of similar-fact evidence. (15)
- (b) With specific reference to decided cases, discuss the admissibility of similar-fact evidence when it is used to prove -
- (i) identity; (4)
  - (ii) design or system. (6)
- [10]

**QUESTION 3 (25 marks)**

- (a) Explain the traditional approach regarding the admission of opinion evidence. (6)
- (b) Discuss the decision in *S v Ramgobin* 1986 4 SA 117 (N) in relation to the admission of opinion evidence. (6)
- (c) An accused is charged with murder in that he had pushed two people off a ledge of a hotel that was under construction. When asked about the circumstances of the double murder, the accused stated that he was so angry at the time that he had no recollection of the event. A psychiatrist is

called by the defence to give evidence in regard to the accused's state of mind. On the basis of these facts, answer the following questions.

- (i) Discuss the factors that the court will take into consideration in order to determine whether the psychiatrist is qualified to be an expert witness. (5)
  - (ii) Discuss whether it is permissible for the psychiatrist to state in evidence that the accused is "not guilty". (6)
- [13]

#### QUESTION 4 (25 marks)

- (a) State the reasons for the exclusion of hearsay evidence. (5)
- (b) 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)
- (c) 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. 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.
  - (i) Discuss whether the evidence of the nurse regarding the statement made by C is admissible. (8)
  - (ii) Discuss whether the evidence of the doctor is admissible regarding the statement made by C, if the doctor was not present when C made the statement but the nurse had told the doctor what C had said. (7)

[15]

#### 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 him (ie Thabo), which is being 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)**

(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? (6)
- (ii) If Jabu does eventually refuse to testify, what action may the court take? (4)
- [10]
- (b) Discuss the case of *Raphael Solwako Mkonta v R* 1979-1981 SLR (HC) in regard to the application of the best evidence rule in Swaziland. (7)
- (c) Discuss judicial notice of notorious facts. (8)

**QUESTION 7 (25 marks)**

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