

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER 2008

TITLE OF PAPER LAW OF EVIDENCE

COURSE CODE L302

TIME ALLOWED THREE (3) HOURS

TOTAL MARKS 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 *Delew v Town Council of Springs* 1945 TPD 128 in regard to the admissibility of 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 traditional formulation of the rule regarding the exclusion of opinion evidence. (7)
- (b) Discuss the decision in *Hollington v F Hewthorn & Co* [1943] All ER 35 in regard to the admissibility of opinion evidence. (6)
- (c) With specific reference to case law, discuss the manner in which disputed fingerprints and palm prints may be proved by evidence of opinion. (12)

QUESTION 4 (25 marks)

- (a) State the reasons for the exclusion of hearsay evidence. (6)
- (b) 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.

- (i) Discuss whether the evidence of the T regarding the statement made by S about the municipal boundaries of Siteki, is admissible. (11)
 - (ii) Discuss whether the evidence of V regarding the truth of the statement made by S is admissible. (8)
- [15]

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 call 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) Discuss the presumption that all persons are presumed to be competent and compellable witnesses. (8)
- (b) By reference to case law, discuss the competence of a child to give evidence as a witness. (10)
- (c) Explain what is meant by the term "judicial notice". (4)
- (d) State three instances when secondary evidence of a document is admissible. (3)

QUESTION 7 (25 marks)

(a) Discuss the quantum of proof in regard to –

- (i) the civil standard; (4)
 - (ii) the criminal standard. (8)
- [12]

(b) Discuss the cautionary rules that apply in regard to –

- (i) sexual cases; (8)
 - (ii) police traps, spies and informers. (5)
- [13]