

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, MAY 2009

TITLE OF PAPER : LAW OF EVIDENCE
COURSE CODE : DL031
TIME ALLOWED : THREE (3) HOURS
TOTAL MARKS : 100
INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS

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

Question 1

(a) What was the effect of the General Law and Administration Proclamation 4 of 1907 in relation to our law of evidence? (5 marks)

(b) Is a 10 year old child a competent witness? (10 marks)

(c) Your client is being sued for damages on the basis that he defamed the plaintiff. He comes to you to instruct you on the matter. He informs you that he intends making formal admissions in respect of this matter. He requests advice on formal admissions. Advise him accordingly in respect of his matter. (10 marks)

(Total marks = 25)

Question 2

In a civil trial, plaintiff takes to the stand. After giving the court his full names, he begins testifying being led by his attorney who asks questions which suggest the required answers. The witness goes further to read from his statement, his excuse being that he has forgotten some of the things he wrote in the statement.

The judge stops the proceedings and informs the attorney for plaintiff that there is something seriously wrong with the way the evidence is being presented.

You are the attorney for respondent. The judge calls upon you to make submissions on what has gone wrong. Make full submissions. (25 marks)

Question 3

(a) Opinions of people regarded as experts are admissible. How qualified should an expert be to be regarded as such, and what is the scope of his or her evidence?

(18 marks)

(b) During cross-examination, attorney for the accused person suggests to P, who was testifying for the State, that her testimony is a recent fabrication. What can the prosecutor do in these circumstances to show that P's evidence is not a fabrication?

(7 marks)

(Total marks = 25)

Question 4

Discuss exceptions to the rule against similar-fact evidence.

(25 marks)

Question 5

Your client, a known criminal comes to you for advice as usual. He informs you that he intends seeking legal advice from you regarding how he may avoid paying taxes which are due and payable to the government of Swaziland. He informs you that as usual, he would like any communication between the two of you regarding this matter to be confidential.

(a) Explain to your client the nature of legal professional privilege. (20 marks)

(b) Will the communication between yourself and your client regarding how to avoid paying the taxes be protected by the privilege?

(5 marks)

(Total marks = 25)

Question 6

Write notes on the following;

- (a) Evidence on affidavit. (5 marks)
 - (b) The order of evidence. (5 marks)
 - (c) Plea of guilty at High Court. (5 marks)
 - (d) Witnesses called by a court. (10 marks)
- (Total marks = 25)