

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, MAY 2010

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

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

Question 1

(a) What do you understand by the term “the best evidence rule”? (15 marks)

(b) What do you understand by the term “forensic evidence”? (10 marks)

(Total marks = 25)

Question 2

(a) Discuss the term “judicial notice” in relation to notorious facts. (15 marks)

(b) How does the presumption applicable to formal validity of a marriage apply?

(10 marks)

(Total marks = 25)

Question 3

(a) X is appearing before the Mbabane Magistrate’s Court on a charge of indecent assault. He is accused of having indecently assaulted Y, an 8 year old girl. The prosecution calls Z to testify to the effect that Y reported to her what X had done to her. The attorney for X objects to Z’s testimony on the basis that she is testifying to what she was told, not what she saw and heard. You are the prosecutor in the matter, advise the court on whether or not such evidence is admissible. (15 marks)

(b) How do the Swazi (National) Courts treat the rule against hearsay evidence?

(10 marks)

(Total marks = 25)

Question 4

- (a) Discuss the rule in *Hollington v Hewthorn*. (15 marks)
- (b) What do you understand by the term “marital privilege”? (10 marks)
- (Total marks = 25)

Question 5

(a) In defamation proceedings the plaintiff informs the court that she intends to present evidence of her good character. She also informs the court that she will be calling her 10 year old niece to testify to the merits of the matter against the defendant.

- (i) Is the plaintiff allowed to present evidence of her good character? (2 marks)
- (ii) Is the plaintiff's 10 year old niece a competent witness? (8 marks)

(b) What is ‘absolution from the instance’? (11 marks)

(c) Is there a privilege applicable to statements of witnesses? (4 marks)

(Total marks = 25)

Question 6

Discuss the term “declarations against interest”? (25 marks)