

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, MAY, 2010

TITLE OF PAPER: THE LAW OF EVIDENCE

COURSE CODE: L 302

TIME ALLOWED: THREE HOURS

INSTRUCTIONS: 1) ANSWER FOUR (4) QUESTIONS
2) ALL QUESTIONS CARRY EQUAL MARKS

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QUESTION 1

Mr Ceji'njabulo Dlongolo is charged with rape. He admits that he had sexual intercourse with the complainant but alleges that complainant consented. When the complainant is cross examined by Defence Counsel she is asked: whether she was convicted of soliciting five years ago? ; whether she has voluntarily had sexual intercourse with the accused on an earlier occasion; and whether she had had sexual intercourse with at least a dozen other men during the three months preceding the date the alleged offence of rape was committed by the accused? The complainant denied all these allegations. Discuss the position of the law regarding whether the defence may call other evidence to contradict the complainant. Give reasons for your answer citing relevant authorities. Would the position of the law change if the accused called a Psychiatrist who examined him to give evidence based on his opinion that the accused is unlikely to have committed the crime? Give reasons for your answer citing relevant authorities.

(25 Marks)

QUESTION 2

In our jurisdiction, the law pertaining to the rule against hearsay evidence is nothing more than a relic of the past. Critically evaluate the validity or invalidity of this statement making reference to authorities.

(25 Marks)

QUESTION 3

The law of evidence regarding the admissibility of admissions and confessions is tautologous and requires radical in roads to keep it in step with the times. Critically evaluate the validity or invalidity of this statement citing relevant authorities where appropriate.

(25 Marks)

QUESTION 4

Discuss the law pertaining to the attorney and client privilege. What are some of the characteristics which may be used to test the existence or absence of the attorney and client privilege?

(25 Marks)

QUESTION 5

Schwikkard, in her article "The abused Child: A Few Rules of Evidence Considered" on the issue of competency of children to give evidence states that the law supports a "presumption of incompetency" "because children, unlike any other witness, are required to pass a test before their evidence will be admitted". What is the import of this assessment of our law of evidence regarding competence and compellability of witnesses in particular, a child witness?

(25 Marks)