

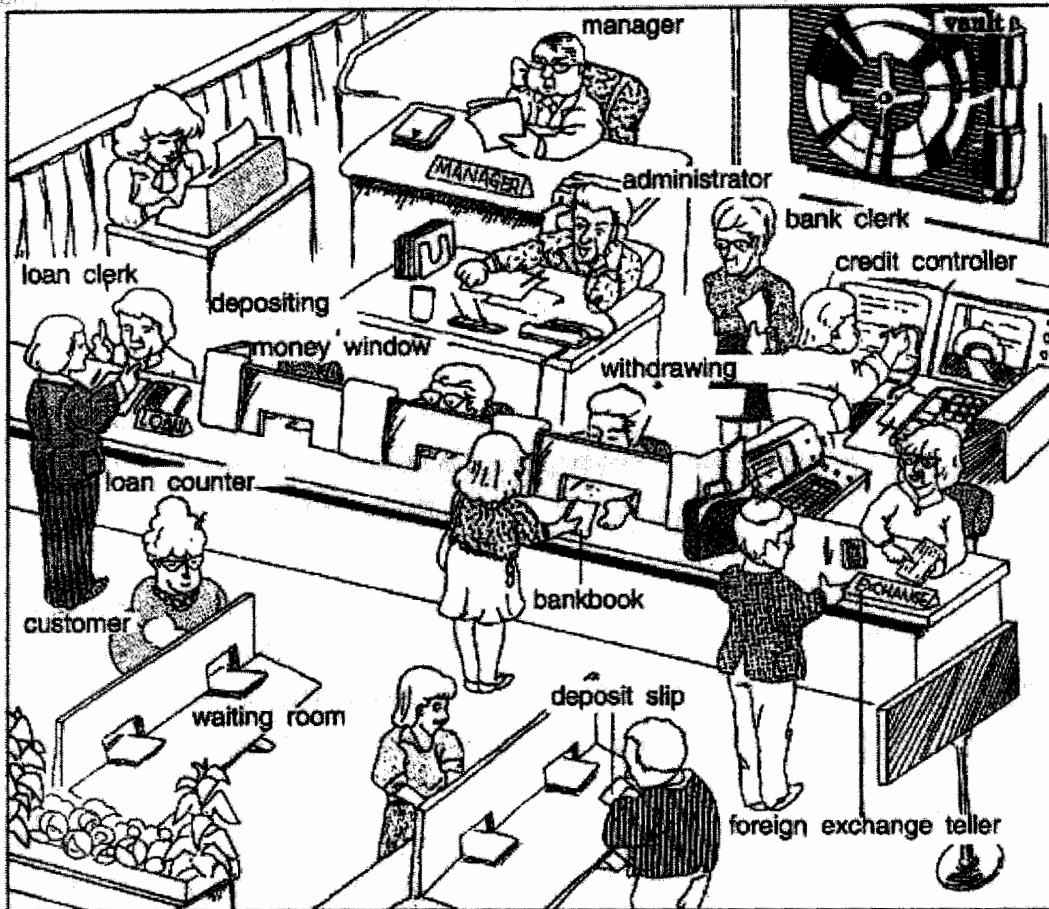
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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

EXAMINATION PAPER, MAY 2011
(MAIN)

TITLE OF PAPER : **LAW OF EVIDENCE**
COURSE CODE : **L302**
DURATION : **3 HOURS**
MARKS ALLOCATED : **100 MARKS**
INSTRUCTIONS : **ANSWER QUESTION ONE**
WHICH IS COMPULSORY, &
THREE (3) QUESTIONS
OF YOUR CHOICE.

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



Question 1

Mr Menzi Gobola is the manager of FNB Matsapha. One year ago today, at about 10:00 a.m., Mr Menzi Gobola was at his desk in his office in the rear of the bank

when he heard a gunshot.

He jumped up, ran to the door of his office, and looked out. He saw a man with a

Handgun at the loan counter, whom he now identifies as the defendant, Sputnik. The defendant, was standing about 15 meters, at one of the teller's windows.

Mr Menzi Gobola says that the defendant turned his head, looked momentarily right at

him, then turned around and ran through the lobby and out the bank's front door.

On an indictment for Robbery, **instructions;**

A. Prosecution: Lead Mr Menzi Gobola, using the diagram to illustrate his

testimony

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B. Defense Attorney. Make the appropriate objections and cross-examine Mr Menzi Gobola.

Closely referring to the facts/diagram of the case, describe in explicit detail the **FULL** course (as well as pertinent procedural issues) of the criminal trial of your client, explaining how you would ultimately secure an acquittal despite the procedural and other evidential impediments against him. **NB: Conservative creativity is permitted!**

(25 Marks)

Question 2

The brothers Senzo and Brian Mpanza were brought to trial charged with the murder of a man named Bricks Somnotfo on October 5 2007. At an earlier trial Daladi Somnotfo, stepson of the deceased, had been found guilty of his murder. The prosecution alleges that Senzo and Brian were also involved in the killing.

Daladi Somnotfo is a witness for the prosecution. During the course of the investigation Daladi made numerous statements to the police. He told the police on three occasions in October and November 2007 that he had not seen Senzo and Brian Mpanza on the evening on which Bricks Somnotfo died. Daladi testified in June 2009 that Senzo and Brian Mpanza assisted him in forcing the deceased to enter Brian's car and the latter then drove to a quiet spot where they "laid into" him because of the way he habitually treated Daladi's mother.

Daladi Somnotfo identifies a three pound sledge hammer as one that had belonged to Brian and states that it was the murder weapon. Over objection the hammer is entered into evidence. The judge subsequently picks up the hammer, examines it, hefts it and considers whether, given the comparison between the build of the accused and the witness, Daladi, it was likely that it was one or other of the Mpanza brothers that had used the hammer.

The defence cross-examined Daladi and he responds as follows:

Q: You have been convicted of this murder, haven't you? A: Yes.

Q: Is it true that you are testifying today because you believe that if you cooperate with the prosecution you will get better treatment in prison?

A: No.

Q: Isn't it true that the police sergeant told you that they wanted the goods on the Mpanza's? A: No.

Q: Did you not make statements to the police in October and November 2007 in which you said that you did not see the brothers on October 5?

A: No, I didn't say that.

Q: I have copies of your records of interview in my possession; do you still deny that you said you had not seen Brian and Senzo on October 5?

A: I don't remember saying that.

The prosecution objected to this line of questioning and the judge sustained that objection.

At the end of the trial, and at the arguments stage, defence counsel justiciously advert the judge on the danger of convicting the accused defendants on the basis of this evidence. The judge refuses to do so.

Discuss the evidentiary issues that arise for consideration by the appellate court.

(25 Marks)

Question 3

Madluphuthu is charged with bank robbery. In his criminal trial, Madluphuthu wants to introduce the testimony of Sarah who would testify that her husband, Sam, told her in a faint voice, just before he died of injuries he suffered in an unrelated car accident, *"I'm not going to make it. There's something you've got to correct. That stickup robbery job they're blaming on Madluphuthuit was me, Sam, who did it!"*

- A). Is Sarah's testimony admissible in Madluphuthu's bank robbery trial?
- B). Does it matter whether some of the money from the robbery was later found in Sam's car?

[For your information: there is no relationship between Sarah And Madluphuthu. Sam either knows Sputnik, or at least knows that is charged with this crime.

(25 Marks)

Question 4

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Render a functional and exhaustive discussion of our law of opinion.

(25 Marks)

Question 5

A crowd of people that are attending a DJ "Sbu" Kwaito concert are attacked and robbed of their wallets and jewellery at Club Le-Zone. X, Y and Z, members of the audience, capture footage of the criminals on a non-digital camera, a non-digital video-camera and a cellular-phone respectively. The robbers are caught and charged with robbery.

The prosecution wishes to use these vital items of evidence to secure. You have been retained by the DPP to write a brief detailing the legal implications, if any, of these and prospects of successful prosecution.

(25 Marks)

Question 6

On January 4, 2011, Samantha Simelane was found floating face down in the new swimming pool at the large suburban home where Samantha (known to her friends as Sammy) lived with her husband Bricks. Bricks was indicted for murder and brought to trial in the High Court.

Detective Sputla was in charge of the investigation of Sammy's death. Krupky knew that Bricks has been married three times before and that his previous three wives (Amy, Jami, and Bamy) were found drowned in the bathtub with traces of GHB (also known as the "date rape" drug) in their bloodstream. Sputla also knew that most people in the town where Bricks lives believe that Bricks killed all four of his wives (although before the death of Sammy, Bricks has never been charged with a crime).

Answer each of the following **questions** concerning Brick's trial for murder.

(1) Two days after Sammy's death but before Bricks was arrested, Detective Sputla met Bricks at the neighborhood Nando's restaurant and asked him a series of **questions** about his wife Sammy's death and other related matters.

(a) As part of the prosecution's evidence-in-chief, Sputla will testify that, during the interview at Nando's, Bricks told him that he had recently taken out a life insurance policy on his wife. Bricks lawyer objects to Sputla's testimony saying that it is hearsay. How should the trial judge rule on this objection? Explain.

(b) Sputla knows from his own personal observations about the circumstances of the deaths of Amy, Jami and Bamy. If permitted, he will testify about these circumstances. Brick's lawyer objects to Sputla's testimony about the deaths of Brick's previous wives. What are the arguments for and against admitting this testimony? Evaluate these arguments.

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(c) Can the prosecutor ask Detective Sputla about his personal opinion about whether Bricks killed any of his previous wives? If so, why; if not, why not?

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(d) Can the prosecutor ask Detective Sputla about Bricks reputation among members of the community as a murderer?

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(e) Suppose that Detective Sputla is **not** called as a witness as part of the prosecution's case in chief. Suppose, instead, that Bricks' lawyer is allowed to call Pastor Jerry to testify to Brick's moral character and his trustworthiness. Can the prosecution *now* call Detective Sputla and ask him (i) about his personal opinion about whether Bricks killed any of his previous wives OR (ii) about Brick's reputation among members of the community as a murderer? Explain.

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Total 25 Marks