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**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

**EXAMINATION PAPER, JULY 2011**  
**(SUPPLEMENTARY)**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>LAW OF EVIDENCE</b>
<b>COURSE CODE</b>	<b>:</b>	<b>L302</b>
<b>DURATION</b>	<b>:</b>	<b>3 HOURS</b>
<b>MARKS ALLOCATED</b>	<b>:</b>	<b>100 MARKS</b>
<b>INSTRUCTIONS</b>	<b>:</b>	<b>ANSWER ANY FOUR</b> <b>QUESTIONS OF YOUR</b> <b>CHOICE.</b>

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

### Question 1

123

Menzi Simelane has been brought to trial on charges of armed robbery. It is alleged that on the morning of Tuesday 21 October 2010 Menzi and an unidentified man carried out an armed robbery of the Standard Bank on Ngwane Street in Manzini.

**Assume that you are the trial judge in this case which is being heard by a jury and that you have been asked to make rulings on the admissibility of evidence in the following circumstances:**

- (a) The prosecution call a witness, Makoti Dlamini who is identified as a teller in the said bank. She states that a man walked up to the counter pointed a gun at her and said: "This is a hold up .... I want you to put all the money in the sack."

The defence object to the reception of this evidence on the basis that it is hearsay and further that it is prejudicial to the defence. 10

- (b) Makoti testifies that: "I was asked to attend an identification parade at the police station. I was shown seven men. The man I identified is sitting over there (she pointed at the defendant Menzi in the dock)." When cross-examined she admits that she was terrified and that her eyes were focussed on the pistol that the man was pointing at her but insists "He was the man there that was closest to what I remembered."

Indicate whether you consider this evidence admissible and on what basis and what other precautions you would have to take in dealing with this evidence. 10

- (c) The defence suggests that it would assist the court to understand the testimony given by Makoti and other witnesses if a visit to the bank

could be arranged. The prosecution objects on the basis that the bank has recently remodelled the premises introducing new security measures. Discuss the factors you would have to consider in making a ruling on this application. <sup>164</sup>

5

Total (25 Marks)

### Question 2

a) Define a presumption and provide a simple example.

5

b) Referring to one, describe the stages for application of a presumption.

5

c) Distinguish between a presumption of law and circumstantial evidence. 5

d) Closely referring to a relevant case, in your opinion, is the proper relationship between a presumption and the onus of proof. 10

Total (25 Marks)

### Question 3

Critically discuss the basis of our law on relevance and admissibility.

(25 Marks)

### Question 4

a) Referring to any two relevant cases, distinguish between the onus of proof and the evidentiary burden. 10

b) Referring to case law, discuss the critical issue of the incidence of proof in civil cases under our law. 15

Total (25 Marks)

**Question 5**

165

- a) According to *S v Chabalala*, what is the correct approach in evaluation evidentiary matter. 5
- b) Fully discuss the case of *R v Blom* and place it in its relevant context. 5
- c) Define corroboration and render a comprehensive discussion of same in relation to confirmation of a confession. 10

Total (25 Marks)

**Question 6**

Critically discuss the constitutional imperatives brought to bear on three common law evidentiary rules you can identify.

(25 Marks)