

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

86

MAIN EXAMINATION PAPER, DECEMBER 2011

TITLE OF PAPER : LAW OF EVIDENCE
COURSE CODE : DL039
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) How do formal admissions apply in legal proceedings? (12 marks)
- (b) What categories of persons are regarded as incapable witnesses?(5 marks)
- (c) What does the term “character” mean and is evidence of good character admissible in criminal cases? (8 marks)
- (Total marks = 25)

Question 2

Mr. X comes home with his 10-year old son and finds Mrs. X sitting in a compromising position with a certain Mr. Y who is known to both Mr. X and Mrs. X. Mr. X asks what is happening and before a response is given, assaults Mrs. X with an open hand on the face. Mrs. X falls down and cries. In the meantime, Mr. X goes for Mr. Y with the intention of assaulting him. Whilst Mr. X is grabbing Mr. Y by his clothes, Mrs. X picks up a vase and hits Mr. X with it on the head and as a result, Mr. X gets badly injured and falls down and becomes unconscious. This happens in the full view of Mr. and Mrs. X's 10-year old son who makes a sound recording of the commotion as it unfolds using a cellphone. Police arrive and Mrs. X is arrested and charged with Attempted Murder. A few months later Mrs. X is put on trial. Mr. X, the 10-year old son and Mr. Y are called as witnesses.

- (a) Is Mr. X a compellable witness? (3 marks)
- (b) Is the 10-year old son a competent witness? (9 marks)
- (c) If Mr. Y refuses to testify how may he be dealt with? (7 marks)
- (d) Is the sound recording admissible? (6 marks)
- (Total marks = 25)

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 J, who was testifying for the State, that her testimony is a recent fabrication. What can the prosecutor do in these circumstances to show that J's evidence is not a fabrication?

(7 marks)

(Total marks = 25)

Question 4

(a) Discuss the "best evidence" rule.

(10 marks)

(b) Discuss the three (3) rules which a party relying on a document has to comply with for such evidence to be admissible.

(15 marks)

(Total marks = 25)

Question 5

Discuss exceptions to previous consistent statements in relation to the following:

(a) Complaints in sexual cases.

(19 marks)

(b) Prior identification.

(6 marks)

(Total marks = 25)

Question 6

Discuss exceptions to the rule against similar-fact evidence.

(25 marks)