

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

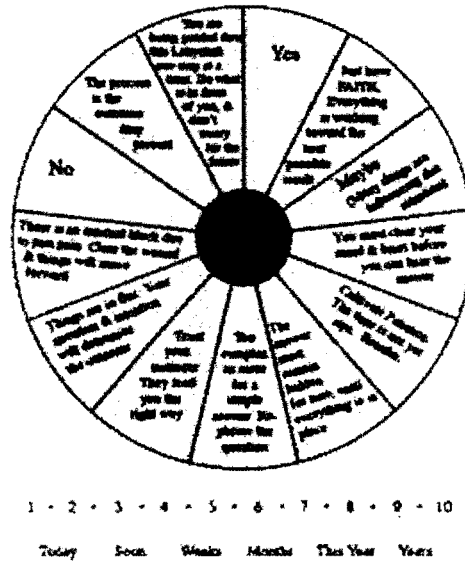
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EXAMINATION PAPER, 2011
(MAIN)

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.

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GRANTED BY THE PROCTOR.**

QUESTION 1



The above picture (*shown for, an albeit lame, visual effect*) depicts a Wicca chart/pendulum frequently consulted by Chief Justice Peter Sozo as a decisional aid in “heavy”/penumbral cases he presides over. Despite being a highly learned and first-class legal thinker, CJ Sozo lives a rather conflicted professional life since it has not been uncommon for the learned CJ to privately consult his charts and using the cover of night, further make visitations to his Sangoma for spiritual advice on these menacing cases. The “jury has long been out” on his success rate for accurately determining these cases.

In one of these cases, a prominent and veritable businessman (who also served as a lay preacher), Rev. Charles Ngozo was indicted for the brutal murder of his wife. He was caught by police alighting from a train in Sidvokodvo with her decapitated head in his suitcase. An inconsolable and emotional Rev Charles has repeatedly denied murdering his wife (and a societal census cleared him). All the real and other evidence in the case are evenly matched. Adverting to the judicial mantra that evidence is not a *sine qua non* for proof, CJ Sozo applied the relevant evidentiary principles as well as his sorcery “aids” to acquit the holy man.

Advise Chief Justice Sozo drawing on the history of our rules of evidence as well as the inadequacy or otherwise of our contemporary evidentiary rules, and critically determine whether there is a place for *judicium dei* (from whatever source) as an aid to decisional accuracy.

[25 Marks]

QUESTION 2

A) Indicate which of the following statements constitutes hearsay and, in each case, explain your answer **(4 Marks each)**.

- i) To show that Simon Simelane was ill, Mrs Simelane offers to testify that Simon complained of pain in his chest.
- ii) To prove paternity, the Martha offers evidence that the Paul referred to the child as "my son."
- iii) As tending to prove Sputnik's insanity, the fact that he was confined in an insane asylum.
- iv) To prove that the Peter committed the crime of rape, the prosecution offers a confession made to police officers.
- v) To prove that the insured, H, under a life policy is dead, his wife offers a death certificate.

B) Explain the doctrine of *res gestae*. **(5 Marks)**

[25 Marks]

QUESTION 3

Critically referring to the relevant constitutional provision in the Constitution of Swaziland, render a functional discussion of the case of **S V ZUMA** 1995 (1) SACR 568 (CC).

[25 Marks]

QUESTION 4

You are a junior associate assigned to assist Mr Damazio, your boss, a senior Partner in the representation of Sputnik in his delictual suit against Careless arising out of a car accident. On the first day of the trial Damazio calls Bricks, an eye witness to the crash. You and Damazio expect Bricks to testify that he saw Careless' car for several seconds before the crash and estimated that Careless' speed at the time of the crash was 100 kilometers per hour. Instead, Bricks' testifies that he estimated Careless' speed to be 50 kilometers per hour. Damazio has scribbled you a note asking the following:

1. I have Bricks' statement to the officer on the scene that he (Bricks) estimated Careless' speed to be 100 kph. Do I have to show Bricks the statement before asking him about it, and for what purpose may I use it for?

(5)

2. If I use the prior statement to the officer on cross-examination, will that open the door to Careless' lawyer bringing in Bricks' good character for truthfulness? (5)
3. If I do not ask Bricks' about the prior statement, may I later call the officer to testify about it? (5)
4. If I want to introduce Bricks' five-year old conviction for embezzlement and corruption, what's my best argument? (10)

The Judge has adjourned the court for 30 minutes. Eager to impress your boss about your knowledge of principles of Evidence, answer his questions and include an explanation for each.

[25 Marks]

QUESTION 5

Menzi Simelane has been brought to trial on charges of armed robbery. It is alleged that on the morning of Tuesday 21 October 2011, 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 and that you have been asked to make rulings on the admissibility of evidence in the following circumstances:

- (a) The prosecution calls 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 objects to the reception of this evidence on the basis that it is hearsay and further that it is prejudicial to the defence. (8)

- (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 precaution(s) you would have to take in dealing with this evidence. **(10)**

- (c)** Later the defence objects to the general quality of the evidence adduced by the prosecution on the ground that the robbery took place under the auspices of the “unidentified man”, who was a police trap and agent provocateur.

Determine the success of this submission as well as the issue of relevance. **(7)**

Total [25 Marks]

QUESTION 6

In respect of certain evidence adduced by certain categories of person under the law of evidence, the courts have proceeded *ex abundanti cautela*. Identify these persons and critically discuss the courts’ treatment of this evidence.

[25 Marks]