

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

178

**EXAMINATION PAPER, 2012**  
**(SUPPLEMENTARY)**

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

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN**  
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### **Question 1**

Samantha Skwaya had been charged with involvement in a robbery with other accused. The police, using information from an unauthorized wire-tap, had raided Skwaya's house and found some of the money concealed in the ceiling, where it had been placed by one of the alleged perpetrators of the robbery. When the police had entered accused Skwaya's house, they informed her that they intended to use and her family as witnesses and would not arrest them. It was later agreed with representatives of the State that they would not be prosecuted in connection with the case if they testified in the trial of certain of the alleged perpetrators. When the State's case fell through in that case, Skwaya and her family were not called upon to testify and they were subsequently charged. Skwaya was convicted in the court *a quo* of having been an accessory after the fact to robbery. The court held that since Skwaya had not been called upon to testify, despite being available and willing to do so, the State had not breached its undertaking.

On appeal it was contended that the fairness or otherwise of the trial was not solely a question whether or not a contract had been breached. It was further contended that the evidence of the finding by the police of the stolen money was inadmissible, as the discovery had been made in breach of accused 10s rights. The state contended that the evidence was real evidence and thus admissible.

The matter is now before the Supreme Court of Appeal and you as presiding judge are required to deliver judgment by extrapolating the legal issues presented and making a ruling.

**[25 Marks]**

### **Question 2**

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

**[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**

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**

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

**[25 Marks]**