

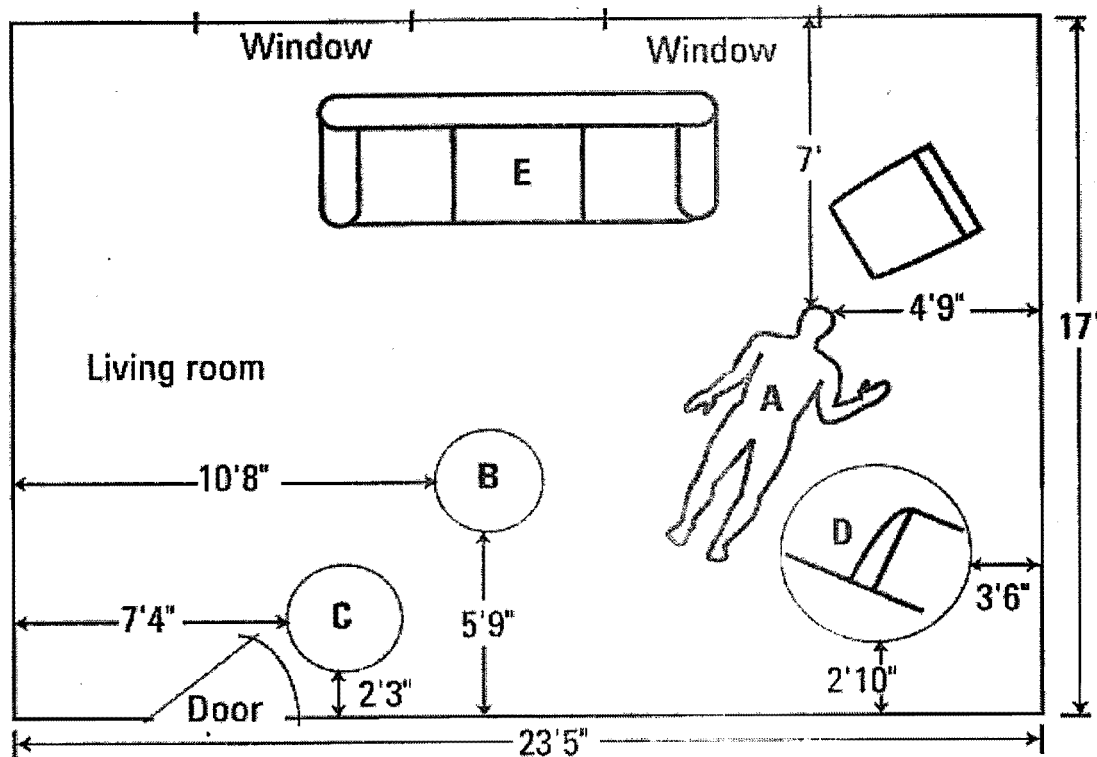
**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

**EXAMINATION PAPER, 2013
(MAIN)**

TITLE OF PAPER	:	LAW OF EVIDENCE
COURSE CODE	:	L302
DURATION	:	3 HOURS
MARKS ALLOCATED	:	100 MARKS
INSTRUCTIONS	:	ANSWER QUESTION <u>ONE</u> 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



- A - Male Body (Samuel Dube)**
- B - Gun**
- C - Bloody Glove**
- D - Overturned Chair**
- E - Sofa**

David Sigebengu has been charged with the gruesome murder of wealthy businessman, Samuel Dube in 2010. The prosecution alleges that Sigebengu, a big and over-sized workman, was Mr Samuel Dube's trusted consulting handyman who would regularly attend to the house's plumbing and other renovation needs. Due to his weight, he often had to work while seated.

The state also alleges that Sigebengu was the paramour of Samuel's wife and had had a secret and illicit relationship with her for over four years. Samuel had taken a E5million life policy cover for himself making his wife the sole beneficiary. It is further alleged that the two lovers conspired to have Samuel killed and that Sigebengu was to execute him, the motive being to divide the insurance pay-out thereafter.

On the eve of valentine's day, while his family was away on a weekend holiday, and at around 1:30 am, Sigebengu gained unlawful entry into Samuel's house (through the living room window) where he found Samuel

alone relaxing on his sofa and watching television. A little while later, a short scuffle ensued between the two and Samuel was shot and he died instantly.

Police forensic investigators were called into the scene of the crime to gather evidence. The lead forensic investigator for the state subsequently drew the crime scene sketch posted above for use by the prosecution.

The forensic analysis results established, *inter alia*, that; Samuel was shot 6 times in the head and chest by a 9mm revolver (B) at close range (the shots fired were those of a professional and were lethal); two sets of footprints were found on the lounge carpet, one of them (unknown) indicating movement between the door and the overturned chair (D) and half-way to the sofa (E); Sigebengu's fingerprints were found on the broken window-pane and door knob, as well as the chair; the prints on the small glove were too faint to accurately identify.

The prosecution also tendered evidence of a E15,000 payment to the account of Sigebengu by Mrs Dube which it alleges was a reward for the hit on her husband. The defence alleges that this payment was an automatic debit order to the account of Sigebengu for handyman services rendered for the month of January.

With all these facts in mind;

- a) Firstly, discuss the legal history and utility of forensic evidence under our law. (10)
- b) Secondly, drawing on relevant evidentiary principles/rules, render a functional memorandum for the defence that critically and creatively rebuts the incrimination of Sigebengu in the murder of Samuel Dude. (15)

Total Marks [25]

QUESTION 2 (5 marks each)

Applying any appropriate illustration, write short notes on the following;

- a) *Inspection in loco*
- b) *Manifesta non indigent probatione*
- c) "dead man's rule"
- d) State privilege
- e) *Res gestae*

[25 Marks]

QUESTION 3

Bricks Sigebengu has been brought to trial on charges of armed robbery. It is alleged that on the morning of Good Friday, the 29 April 2013, Bricks 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, Ms Ventura 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." She obliged.

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) Ms Ventura insistently testifies under oath that: "the man who robbed the bank was light in complexion and had black Caucasian hair." However, at a pre-trial deposition, Ms Ventura had testified under oath that the man who robbed her and the bank had blonde hair.

Fully indicate how Ms Ventura as a witness may be led and cross-examined on this point. (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 4

You have been retained as one of the Swaziland High Court judicial clerks. Closely referring to the South African case of **NDPP V ZUMA ZASCA [2009]**, write a memorandum for the Chief Justice critically assessing judicial evaluation of like cases in Swaziland.

[25 Marks]

QUESTION 5

Daladi Motsa has been charged with involvement in a robbery with other accused. The police, using information from an unauthorized wire-tap, had raided Daladi'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 Daladi's house, they informed her that they intended to use her 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, Daladi's and her family were not called upon to testify and they were subsequently charged. Daladi was convicted in the court *a quo* of having been an accessory after the fact to robbery. The court held that since Daladi 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. The prosecution, on the other hand, contended that the evidence was real evidence and was 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]