

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW**

149

**SUPPLEMENTARY EXAMINATION, JULY 2014**

**TITLE OF PAPER : LAW OF EVIDENCE**  
**COURSE CODE : L302**  
**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**

150

Your client is on trial for theft. The eye witness for the prosecution is an eight (8) year old boy who tells the court how he saw your client committing the offence with which he is charged. The boy further tells the court that your client is troublesome in the area where the offence was committed because he has the tendency to break into people's houses whilst they are fast asleep at night.

The presiding magistrate calls upon you to address her on whether or not this testimony is admissible. (25 marks)

### **Question 2**

V is suing W for breach of contract in that W has not performed in accordance with their written contract. W opposes the action and requires V to comply with the best evidence rule.

How would V comply with the best evidence rule? (25 marks)

### **Question 3**

Evidence is generally presented at the trial, whether civil or criminal. However, some evidence may be presented before trial. Discuss such evidence in relation to criminal matters. (25 marks)

#### Question 4

151

A husband and wife are having very serious marital problems. The husband suspects that his wife is cheating on him. He decides to burn the wife's car because his reasoning is that it is the car that is enabling her to cheat because she goes whenever she wants. The wife's car is completely destroyed. The husband is arrested and tried for arson. During the trial, his wife testifies against him. The husband's attorney objects to the wife's testimony on the basis of marital privilege.

You appear for the Crown in the matter. The presiding magistrate calls upon you to address him on whether or not the woman's testimony is admissible and whether, he as the judicial officer, can compel the husband to testify in his defence.

(25 marks)

#### Question 5

(a) What is "estoppel by deed"?

(15 marks)

(b) How do our courts deal with a witness who does not show up for trial, or where he or she has shown up, refuses to testify?

(10 marks)

(Total marks = 25)

#### Question 6

What type of facts does a court take judicial notice of?

(25 marks)