

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, DECEMBER 2015

TITLE OF PAPER : LAW OF EVIDENCE
COURSE CODE : DL039
TIME ALLOWED : THREE (3) HOURS
TOTAL MARKS : 100
INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS

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GRANTED BY THE INVIGILATOR TO DO SO.**

Question 1

You appear for the prosecution in a murder trial at the High Court. At the commencement of the trial the accused person pleads 'not guilty' to the charge. The attorney for the accused person stands up and tells the court that they do not dispute the identity of the deceased as the person cited in the indictment. He also tells the court that they do not deny that the deceased died from a gun shot wound to the chest as alleged in the post-mortem report. An eye witness for the prosecution goes to the witness box, introduces himself and takes the oath. After having done so he relates to the court how he heard two (2) people confronting each other. He got closer and then saw the accused person and the deceased fighting. Thereafter he saw he accused person pull out a gun and fire at the deceased in the chest area. The deceased fell down and police were called. The attorney for the accused person objects to the evidence of this witness. He tells the court such evidence is irrelevant and inadmissible. The attorney also tells the court that this witness has been unable to prove the identity of the deceased.

- (a) Address the court on whether such evidence is irrelevant and inadmissible or not. (20 marks)
- (b) Has the identity of the deceased been proved at this trial? (5 marks)
- (Total marks = 25)

Question 2

How did the courts deal with similar-evidence in the following cases?

- (a) *R v Ball* [1910] All ER 111. (5 marks)
- (b) *R v Straffen* [1952] 2 All ER 657. (5 marks)
- (c) *R v Keller and Parker* 1915 AD 98. (5 marks)

(d) *R v Smith* (1915) 11 Cr App Rep 229. (5 marks)

(e) *Makin v Attorney-General for New South Wales* [1894] AC 57 (PC).

(5 marks)

(Total marks = 25)

Question 3

A woman who is the wife of the complainant has been co-charged with another woman with the assault of her husband. During the trial the man testifies about how he was assaulted by the two (2) women. The attorney for the wife objects to the evidence of the man. She tells the court that the man is not a competent witness against his wife. She further tells the court that the wife will testify to the effect that it is in fact her co-accused who assaulted the man because as the wife she is afraid of her husband. You are presiding over this trial.

(a) Is the evidence of the man admissible against his wife? (10 marks)

(b) Is the wife competent to present evidence in her defence? (3 marks)

(c) At this stage of the trial, is it possible for her to testify for the prosecution?

(12 marks)

(Total marks = 25)

Question 4

Discuss the term 'judicial notice.' (25 marks)

Question 5

V sues S for breach of a written contract. S argues that there is no such breach as there is no contract that exists between the two (2). He further states that at the hearing of the matter he will insist that V complies with the 'best evidence rule.'

Discuss the legal position.

(25 marks)

Question 6

(a) Discuss the instances in which persons not regarded as experts are allowed to give evidence of their opinion.

(10 marks)

(b) What is an expert, and how qualified should a person be to be regarded as an expert?

(10 marks)

(c) What is the scope of the evidence of an expert?

(5 marks)

(Total marks = 25)