

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, DECEMBER 2015

TITLE OF PAPER : LAW OF EVIDENCE
COURSE CODE : L302
TIME ALLOWED : THREE (3) HOURS
TOTAL MARKS : 100
INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR TO DO SO.**

Question 1

You appear for the prosecution in a murder trial at the High Court. A witness testifies that on the night the deceased was killed he was sleeping at home at about 6:30 am when he heard the noise of a struggle outside the window of his bedroom. When he looked out he saw the deceased running towards the main door of the house and another person, who later turned to be the accused, running in the opposite direction. Both were males. He came out to see what was happening and found the deceased, who was still alive, lying in a pool of blood. The deceased revealed to him that he had just been stabbed by the accused. The deceased requested the witness to inform his father that he had been stabbed and that his father should come see him urgently. He gave the witness the father's mobile number. The witness further told the court that he saw the accused one (1) day after the incident. Without being asked by the witness, the accused told the witness that he stabbed the deceased due to an argument the two (2) of them had.

The attorney for the accused objects to the testimony of the witness as being hearsay evidence. The presiding Judge calls upon you to address her on the objection.

Address the court fully.

(25 marks)

Question 2

In a civil trial you appear for the defendant. At the hearing of the matter the attorney for the plaintiff points out to you that your client's plea contains a formal admission. After taking further instructions from your client you realize that the formal admission was made in error and your client instructs that you withdraw it. Your client further instructs that she would like to present evidence of her good character and evidence of the bad character of the plaintiff so that the court views her in a favourable light in determining the merits of the matter.

(a) Will your client be allowed to withdraw the formal admission? (15 marks)

(b) Is the evidence which your client intends to present admissible?(10 marks)

(Total marks = 25)

Question 3

In a criminal trial in which the accused is charged with fraud a witness tells the court that the accused forged some documents before committing the crime. He also tells the court that the accused has committed other similar kinds of fraud and is as such a jailbird. Under cross-examination the attorney for the accused puts it to the witness that his evidence is a recent fabrication and that in relation to the alleged forged documents he will require compliance with the best evidence rule.

(a) Should the court accept the evidence of forged documents? (4 marks)

(b) Is the evidence relating to the accused being referred to as a jailbird admissible?

(14 marks)

(c) What should the prosecutor do in relation to what the attorney has put to the witness?

(7 marks)

(Total marks = 25)

Question 4

You have been instructed by a person who is being sued for allegedly negligently injuring another person. Having been served with court process the client shows you a report of a medical doctor indicating the extent of the injuries of the plaintiff.

Give full and proper advice.

(25 marks)

Question 5

You are presiding over a trial in which the accused is being prosecuted for a contravention of the Road Traffic Act of 2007 in that he drove negligently due to the effects of alcohol. A dispute arises in relation to the identity of the motor vehicle which the accused was driving. To address the dispute, police present evidence of the engine number of the motor vehicle and further present evidence why they say the accused was drunk. A person who witnessed the arrest of the accused also testifies to the effect that the accused was drunk. The attorney for the accused objects to the evidence as a whole. He argues that the prosecution has failed to prove that his client was under the influence of alcohol and has also failed to prove the identity of the motor vehicle he is alleged to have been driving.

(a) Should police present evidence of what the engine number is for?(5 marks)

(b) Should the evidence seeking to prove that accused was drunk be disregarded?

(10 marks)

(c) What would be the best evidence to prove whether or not the accused was drunk?

(10 marks)

(Total marks = 25)

Question 6

Discuss the similar-fact evidence rule and exceptions to the rule.

(25 marks)