

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
FINAL EXAMINATION, DECEMBER 2017

TITLE OF PAPER: THE LAW OF EVIDENCE
COURSE CODE: L302
TIME ALLOWED: 3 hours
INSTRUCTIONS: ANSWER ANY FIVE (5) QUESTIONS

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THE INVIGILATOR**

Question 1

X and Y are directors of T investments (Pty) LTd. They are not in good terms because of pending litigation between them. X is suing Y on the basis that Y has stolen shares in the company. The allegation is that Y forged company documents to the extent that she is now shown as the majority shareholder whereas the two had equal shareholding.

At trial, X indicates to court that she will present evidence of her good character in order to show the court she is not fabricating a story against Y and to justify the amount she claims in damages. She acknowledges that her claim could have been much less if it were not for her good character. Y's attorney argues that evidence of X's bad character will be presented in response to X's evidence of her good character. Y's attorney also tells the court that the evidence of the alleged forgery of documents by Y is irrelevant to the proceedings.

At the trial, X takes to the witness box and after introducing herself, informs the judge that she will not take the oath as she does not believe in God and will therefore testify unsworn. She then starts reading from a statement which had been prepared by herself and her attorney for trial.

As a Judge, determine the admissibility of the evidence being presented by X and the evidence intended to be presented by the parties.

[20 marks]

Question 2

Your client has been charged with murder. He appears before the High Court for trial and duly indicates that he intends pleading not guilty to the charge. The prosecution indicates to you that part of the evidence they have against your client is a statement your client made to a magistrate. They say this is a confession and they will use it against your client. Your client instructs you that the statement was not made freely and voluntarily.

During the trial, the Judge indicates that he is prepared to admit the statement but before doing so, he gives you the opportunity to address him on a way forward. Address the court fully. **[20 marks]**

Question 3

V is suing W for the 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?

[20 marks]

Question 4

Evidence is generally presented at the trial, be it civil or criminal. Some evidence, however, may be presented before trial. Discuss such evidence in relation to criminal matters.

[20 marks]

Question 5

“An admission made by a person binds the person who has made it. There is, however, a certain category of admissions which bind another person other than the maker.” Discuss these statements.

[20 marks]

Question 6

Referring to any two relevant cases, distinguish between the onus of proof and the evidentiary burden

[20 marks]

Question 7

Write down the “test” for relevance as stated in *R v Mpanza*.

[20 marks]