

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER – DECEMBER 2017

TITLE OF PAPER	:	LAW OF EVIDENCE
COURSE	:	LAW301
DURATION	:	3 HOURS
MARKS ALLOCATED	:	100 MARKS
INSTRUCTIONS	:	ANSWER ALL QUESTIONS

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INVIGILATOR**

Question 1

With examples write a brief note distinguishing between:

- (a) *Facta probanda* and *facta probantia*; (5)
- (b) Evidence and proof; (5)
- (c) Conclusive proof and prima facie proof; (5)
- (d) Admissibility and the weight of the evidence; (5)
- (e) Circumstantial and direct evidence. (5)

Question 2

Luvuyo is the former non-executive President of the Republic of Hlanganani. He was charged with two counts of sodomy and seven counts of indecent assault. All the offences were allegedly committed while Mzwakali was still in office and the complainants were junior members of his staff such as drivers, groundsman, cooks and cleaners. Mzwakali's criminal trial was held in the High Court; he was convicted on all counts and sentenced to an effective 3 years imprisonment without an option of fine. Mzwakali appeals to the Court of Appeal against both conviction and sentence.

The trial court admitted evidence adduced by the prosecution that the complainants in the sodomy counts reported what happened to them to the Minister in the President's Office after Mzwakali left office; two years after the offences were allegedly committed.

The evidence on each of the indecent assault counts showed that the offences took place in Mzwakali's office at State House and that the former President committed the offences in the same way. Mzwakali would switch on Ballroom music on his compact disc player. He would hold each complainant around the waist with one hand while the other rested on the complainant's shoulder. While dancing in this manner the appellant would tighten his grip around the

complainant's waist and pull his body close to his own. The appellant would then kiss the complainant on the mouth. The trial court admitted the evidence of the complainants to prove the appellant's guilt on counts on which they did not testify.

On appeal the appellant argued that the trial court erred and misdirected itself in admitting the aforementioned evidence. If you are the judge of appeal writing the judgment how would you decide the contentions made by appellant?

[25 marks]

Question 3

- A. What is character evidence? (1)
- B. When will character evidence be admissible? (4)
- C. The issue is whether the accused drove recklessly. A witness states: "I observed the incident from my office window. The accused's car was proceeding from east to west. I could see that the accused was in a hurry and was prepared to weave through the traffic, despite the presence of pedestrians. I had a feeling that an accident would happen, and when it happened I had no doubt who was responsible. It was the accused." Is this evidence or any part of it admissible? (15)
- D. What requirements must be met before the opinion of an expert witness will be admitted into evidence? (5)
- E. In a criminal case what are the cardinal rules of logic which a court has to take into account when reasoning by inference? (5)

Question 4

- A. Siphon and Sifiso are charged with the theft of a motorcycle brought to their workshop for repairs by Melokuhle. They both plead not guilty to the charge. Siphon testifies on his own behalf. He claims that Sifiso had suggested to him that he steal the motorcycle but that he had told his co-accused that he would not participate in such an immoral act. Siphon has two previous convictions for housebreaking with intent to steal. The crown prosecutor and Sifiso's legal representative cross-examine Siphon on his previous convictions.

You are the judicial officer presiding over Siphon and Sifiso's criminal trial. What ruling would you give in response to an objection to cross-examination of Siphon on his previous convictions? (10)

- B. You act on behalf of Sibusiso Hlatshwayo who is charged with murder. You ask the prosecutor to make available copies of the statements of all crown witnesses. The prosecutor refuses on the basis that the statements are privileged. Outline the argument that you would present to the Court in an application to compel the crown to produce the statements of its witnesses. (15)