

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER JULY 2018

TITLE OF PAPER : LAW OF EVIDENCE: GENERAL
PRINCIPLES

COURSE CODE : LAW301

MARKS ALLOCATED : 100

INSTRUCTIONS : ANSWER ALL QUESTIONS

QUESTION 1

Doctor Charles Sibandze, a dentist, is prosecuted for the rape of his patient, Violet. Violet alleges that Charles engaged in sexual intercourse on her without her consent while she was under the influence of local anaesthetic during a root canal treatment. At the time, Charles was attending Primrose, a teacher, for a number of issues including sexual addiction. The Crown seeks to call Primrose to give evidence as to Charles's sexual preferences generally and his alleged sexual relationships with his patients (Primrose and Others) in particular. With reference to legislation and case law advise as to whether or not Primrose's testimony on any of these points is admissible. (25)

QUESTION 2

Write short notes on all of the following:

- (a) Burden of proof (5)
- (b) Standard of proof (5)
- (c) Opinion Evidence (5)
- (d) Similar fact Evidence (5)
- (e) The rule in *Hollington v Hewthorn* (5)

QUESTION 3

- A. What requirements must be met before the opinion of an expert witness will be admitted into evidence? (5)

- B. Are the police obliged to inform suspects of their right to remain silent and their right to legal representation before questioning them? You are required to discuss whether the failure to warn a suspect of these rights would have any effect on the admissibility of evidence. (5)
- C. The High Court of Swaziland dismissed an application in which Kevin Xaba, a murder accused, sought an order compelling the Director of Public Prosecutions (DPP) to make available copies of the statements of all witnesses that the DPP intended to call.

The High Court held that there is a blanket privilege which protects the contents of a police docket against disclosure. Kevin Xaba is dissatisfied with the order of the High Court. He appeals to the Supreme Court against the Order.

You are a Justice of the Supreme Court and you were part of the panel which heard Kevin's appeal. The presiding judge assigns you to write the unanimous judgment of the Court. Write the judgment that you will deliver in Kevin's appeal. (15)

QUESTION 4

A

You are an articled clerk at Lukhele and Dlamini, a firm of attorneys in Mbabane. Your principal, Mr. Abel Dlamini, is representing the Swaziland Royal Insurance Corporation (SRIC) in an action, against Bonginkhosi Malinga, ("the Defendant") for costs for repairs arising from a motor vehicle accident. Your principal has directed you to accompany him to the trial to take notes of the evidence given by witnesses.

On the first day of the trial Abel Dlamini calls Paul Dunn (“Paul”), an eye witness to the collision. You and Abel expect Paul to testify that he saw the Defendant’s motor vehicle for several seconds before the crash and estimated Defendant’s speed at the time of the collision to be 160 kilometres per hour. In his evidence Paul says the Defendant was travelling at approximately 60 kilometres per hour. Abel Dlamini has scribbled you a note asking the following:

(i) I have the statement Paul made to the traffic officer at the scene of the collision that he (Paul) estimated the Defendant’s speed to be 160 kilometres per hour. Do I have to show Paul the statement before asking him about it, and for what purpose may I use it? (5)

(ii) If I do not ask Paul about the prior statement, may I later call the traffic officer to testify about it? (5)

Answer your principal’s questions and include an explanation for each.

B

Write a brief note distinguishing between:

(i) Evidence and Argument (3)

(ii) Evidence and probative material (3)

C

MS is a warder in charge of a hostel at Fendze Senior Secondary School, Fendze is a private school for boys. MS is charged with six counts of indecent assault on the boys under his care. The complainants are the only witnesses on each count and vary in age from thirteen to fifteen years. The evidence on each count shows that the offences took place within a space of three weeks at the accused’s home on

weekday afternoons. The accused enticed the complainants into his house with promises of allowing the boys to play video game console.

The accused performed similar acts on the complainants.

Can the evidence of the complainants be used to prove the accused's guilt on counts on which they did not give evidence? (9)