

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2018

TITLE OF PAPER : LAW OF EVIDENCE

COURSE CODE : LAW 302

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : 1. ANSWER FOUR (4) QUESTIONS
INCLUDING QUESTION 1.
2. QUESTION ONE (1) IS COMPULSORY.

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INVIGILATOR.

Question 1

Bob is accused of murder, attempted murder and robbery in that he stabbed the deceased to death between 1800hrs and 2100hrs on the night of 31st December, 2014 and was also involved in two non-fatal stabbing incidents earlier that same night wherein Bob also robbed two passers-by at knife-point. The main state witness, Mandla, testifies that he and another person Gloria, Bob's wife, had accompanied Bob on the night in question. He had seen Bob stab and rob the two people earlier in the night and he had heard from Gloria that Bob had stabbed the deceased to death. The attorney for the defence objects to evidence relating to the death of the deceased, arguing that this witness has no direct knowledge of that incident. The Crown counters and states that it intends to lead Gloria as a witness. When Gloria takes the witness stand the defence objects and states that Gloria is a spouse to the accused. The Crown's other witness is Mahlobo, a police constable, who testifies that immediately upon Bob's arrest and after sharing with him that courts normally suspend the sentences of people who co-operate with police officers, Bob admitted to stabbing the two people but not the deceased and further pointed him to a knife in the bushes near the crime scene. The defence objects to the admission of Mahlobo's evidence and of the knife as an exhibit. The Crown counters fiercely, more particularly for the admission of the knife. In conclusion the court invites you to address it on whether to mete concurrent or consecutive sentences, in the event it finds the accused guilty.

Identify, and with the aid of relevant authority, fully discuss the relevant principles of the Law of Evidence necessary to guide the court as it assesses the issues in this hypothetical case.

25 marks

Question 2

- (a) Define hearsay evidence and state the relevant statutory provisions that govern the subject in Swaziland. **3 marks**
- (b) State its general rule **2 marks**
- (c) List and briefly discuss 5 common law exceptions to the rule **5 marks**
- (d) Critically analyse the admissibility of statutory exceptions listed in The English Criminal Justice Act of 2003 in local courts. **5 marks**

- (e) In the course of extensive and serious negotiations between A, B and C, A's lawyer reminds the other parties that his client's disclosures and statements are made on a "without prejudice" basis.

- i. What is the effect and rationale for the effect of the words "without prejudice" ? **3 marks**
- ii. Would the non- utterance of the words "without prejudice" have altered the effect in 1 above? Explain. **2 marks**
- iii. Identify and briefly discuss the requirements that give this effect to communication between A and his lawyer **5 marks**

Question 3

Write short notes on the following:

- (a) Examination in chief **2 marks**
- (b) Evidence on Commission **3 marks**
- (c) Parol Evidence rule **3 marks**
- (d) Best Evidence rule **2 marks**
- (e) Single witness evidence **5 marks**
- (f) Circumstantial evidence **5 marks**
- (g) Identification parades **5 marks**

Question 4

A well-known and very wealthy business man, Mr. Sozimali, is arrested and accused of committing massive fraud and corruption relating to government tenders. It is alleged that he inter alia bribed a high ranking government official to obtain many of these tenders. During the criminal trial Mr. Sozimali insists that he should be the one starting off proceedings and leading his evidence together with that of his witnesses in recognition of his status in the country. He further informs the court that from the documents he was furnished with during pre-trial, no "prima facie" case was made against him and he is therefore innocent.

- (a) You are a representative of the Crown, advance full legal argument before court on the proper procedure and rationale for it. **15 marks**
- (b) Further fully submit before court on what, in criminal proceedings, a "prima facie" case is. Make reference to relevant authority. **5 marks**

- (c) Conclude by fully addressing the court on the standard of proof required in this case. Make reference to relevant authority. **5 marks**

Question 5

Xolani manages to commit the perfect theft by stealing from his employer. He spends the money openly and extravagantly. Shortly before spending nearly all the money, Xolani gets a conscience attack and decides to confide in a priest. He tells the priest that he stole the money and that he wants to give himself up to the police. The priest phones the police and Xolani is arrested. While in custody, X changes his story and decides to plead not guilty.

- (a) Fully discuss the nature and requirements for the admissibility of the Priest's evidence? **5 marks**
- (b) Xolani, changes his stance once again and states that he wants to make a formal confession. Fully discuss what a confession is and its requirements. **10 marks**
- (c) Before the confession is admitted, Xolani informs the court that he only changed his story and confessed because the police advised him he would get a lenient sentence if he confessed. Fully discuss how the court should proceed in light of Xolani's latest submission. **5 marks**
- (d) What is a vicarious admission? Briefly discuss 3 examples of such. **5 marks**

Question 6

- (a) What is a presumption of fact and how does it differ from that of law? **5 marks**
- (b) What are the two types of presumptions of law and how do they differ? **5 marks**
- (c) Write short notes regarding presumptions affecting the following:
- i. Animo Injuriandi **5 marks**
 - ii. Legitimacy **5 marks**
 - iii. Documents **5 marks**