

UNIVERSITY OF ESWATINI
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, DECEMBER 2018

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

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

QUESTION 1

Making reference to case law and the relevant statutes, fully discuss the legal status of the following categories of people in relation to their competence to testify;

- a) Children (7 marks)
- b) Insane persons (8 marks)
- c) The accused person as a witness for the defence. (5 marks)
- d) The accused's spouse as a witness for the prosecution. (5 marks)

[Total marks: 25]

QUESTION 2

What is a confession and which requirements should be met before a statement may be regarded as a confession. [25 marks]

QUESTION 3

In a criminal trial before the High Court, the accused is charged with fraud in that he had falsified certain documents lodged by him at the Matsapha Town Council. To prove the fraudulent documents, the prosecution presented to court their counterfoils which had been filed at the same time as the fraudulent documents themselves. Counsel for the accused argued that the counterfoils are secondary evidence and may not be used to prove the contents of the documents, as contents of a document may be proved only by the production of the original.

State the exceptional circumstances where the prosecution would be allowed to prove the contents of the fraudulent documents by adducing the secondary evidence in the form of counterfoils.

[25 marks]

QUESTION 4

Duma has been charged and convicted for the rape of a minor aged 6 years. During the trial the complainant's sister, Thuli aged 14 years had presented clear and concise evidence and told the court exactly what she observed on the day. She described Duma and identified the birthmark on his face, she also described the clothes that he was wearing on the particular day. Her evidence was also corroborated by another state witness.

Duma is now appealing his conviction on the ground that the court *a quo* erred in convicting him because the court should have applied caution when dealing with evidence of a child and therefore, they wrongly relied on the evidence of the young child. Fully discuss the prospects of success of the appeal.

[25 marks]

QUESTION 5

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

[25 marks]