

UNIVERSITY OF ESWATINI

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

EXAMINATION PAPER, DECEMBER 2018

TITLE OF PAPER : GENERAL PRINCIPLES OF THE
LAW OF EVIDENCE

COURSE CODE : LAW 301

TIME ALLOWED : THREE HOURS (3)

MARKS ALLOCATED : 100

INSTRUCTIONS : ANSWER ALL QUESTIONS

QUESTION 1

A.

A is charged with rape, the complainant in the case being B. A wishes to lead evidence that he has had sexual relations with B on two previous occasions; he also wants to adduce evidence that B had sexual intercourse with three other men in the past.

In the light of the Sexual Offences and Domestic Violence (“SODV”) Act, 2018 what are the rules which govern the admissibility of the character of the complainant in sexual offences in Eswatini.

(15)

B.

Sicelo and Wandile are charged with the offence of house breaking with intent to commit theft. They both plead not guilty to the charge. Sicelo testifies in his own defence. He says Wandile had suggested to him that they break and enter into Mr. Joshua’s house but he (Sicelo) told Wandile that he would not participate in such an immoral act.

Sicelo has a previous conviction for entering premises with intent to commit an offence. The Crown Prosecutor and Wandile’s attorney cross-examine Sicelo on this previous conviction.

You are the Magistrate presiding over the criminal trial. What ruling would you give in response to an objection to such cross-examination? Your answer must include references to the applicable law. (10)

QUESTION 2

Write a brief note distinguishing between:

- (a) *facta probanda* and *facta probantia*; (5)
- (b) circumstantial and direct evidence; (5)
- (c) evidence and argument; (5)
- (d) admissibility and the weight of the evidence; (5)
- (e) evidence and probative material. (5)

QUESTION 3

You represent the Crown in a case in which the accused is charged with 3 counts of sodomy and 3 counts of indecent assault allegedly committed against minor boys. The complainants are the only witnesses on each count. The testimony on each count shows that the offences took place over a period of six (6) months at training camps organized by the Athletics Association of Eswatini. The accused is the National coach for the Junior Boys (ages 13-18) Athletics team.

Discuss fully whether the evidence of the complainants can be used to prove the accused's guilt on counts in respect of which they did not testify. (25)

QUESTION 4

A. What is privilege in the context of the law of evidence? You are required to distinguish between privilege, non-competence and non-compellability. (5)

B. Senator Mlungisi Tsabedze is accused of bribery contrary to Section 21 of the *Prevention of Corruption Act, 2006* in that he offered **E60,000.00** (Sixty Thousand Emalangen) to Samukeliso Dladla who is a member of the House of Assembly as an inducement for Dladla to nominate him (Tsabedze) for election to Senate.

The Crown calls Senator Tsabedze's divorced wife as a witness and asks her what the accused told her on a certain day (when they were still married) about the transaction on which the charge is founded. Senator Tsabedze is aware of the fact that he made certain admissions to his former wife and now, through his legal representative, objects to the presentation of her evidence by virtue of Sections 249 and 250 of the *Criminal Procedure and Evidence Act*; his objection is rejected and the witness tell the Court of his admissions.

Eventually Senator Tsabedze also testifies. When cross-examined about the admissions he made to his former wife, he refuses to answer, once again relying upon Sections 249 and 250. Analyse these provisions in order to establish whether Senator Tsabedze was entitled to prevent the examination both of his former wife and himself about the admissions he made. (7)

C. What is hearsay evidence? (2)

D. What is the docket privilege? (2)

E. C is accused of murder. The deceased was a young woman and the post mortem reveals that she died of poisoning. The Crown calls the deceased' mother who says: "shortly before she died my daughter complained of pain and cramps in the stomach. She told me that the accused had impregnated her and given her medicine to induce an abortion- but now she thought the medicine was poison? Discuss fully whether the mother's evidence is admissible.