

UNIVERSITY OF ESWATINI

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JANUARY 2019

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. What is character evidence? (2)
- B. What is the general rule governing the admissibility of the accused's good character in criminal cases and what is the rationale for the rule? (3)
- C. What is opinion evidence? (2)
- D. When will opinion evidence be admissible? (3)
- E. What requirements must be met before the opinion of an expert witness will be admitted into evidence? (5)
- F. What is the rule in *Hollington v Hewthorn*? (2)
- G. What is the meaning of relevance in the law of evidence? (2)
- H. State the two limbs of the principle laid down by Lord Herschell LC in *Makin v Attorney- General of New South Wales* [1894] AC 57 (PC) (6)

QUESTION 2

A. The accused is charged with rape. The alleged victim gives evidence. She explains to the Court where and how the offence took place and identifies the accused as the rapist. During cross-examination of the complainant the spotlight falls on the identification of the accused. The offence had taken place at night and it is suggested to the complainant that she could not have properly observed her attacker's appearance. After completion of her evidence the Crown calls her mother and she states that the complainant had come to her after the offence and told her what had happened. The mother also testifies about what the complainant had said, *inter alia*, about the appearance of her attacker. The next witness is a police detective who states that the complainant had pointed out the accused at an identification parade.

The accused objects against the evidence of the complainant to the mother and of the identification.

You are the judicial officer presiding over the trial. How would you decide the objections? (10)

B. You are representing Sipho Shongwe who is charged with murder. You request the prosecutor to make available copies of the statements of all crown witnesses. The prosecutor refuses on the basis that the statements are privileged. You move an application in the High Court, on Shongwe's behalf, for an order to compel the crown to produce the statements of its witnesses.

The court agreed with the argument of the Director of Public Prosecutions and dismissed your application. Your client instructs you to appeal to the Supreme Court. Outline the argument that you will present to convince the appeal court that the High court erred and misdirected itself. (15)

QUESTION 3

Reverend Dr Makwensu Ratsebe is a retired President of the Republic of Kopano. He was indicted on three counts of indecent assault and 3 counts of sodomy. All the offences were committed while the accused was Head of State. The complainants were junior members of his staff such as drivers, groundsmen, cooks and cleaners. Reverend Dr Ratsebe's criminal trial was held in the High court; he was convicted on all counts and sentenced to an effective 5 years imprisonment without an option of a fine. The former President appeals to the Supreme Court against both conviction and sentence.

The trial court admitted evidence adduced by the crown that the complainants on all the counts reported their ordeal to the Minister in the office of the President after the accused left office; three years after the offences were allegedly committed.

The evidence on each of the indecent assault counts showed that the offences took place in the accused's office at State House and that the former President committed the offences in the same way.

The trial court admitted the evidence of the complainants in the indecent assault counts to prove Dr Ratsebe's guilt in the sodomy counts.

Reverend Dr Ratsebe contends on appeal that the trial court erred and misdirected itself in admitting the evidence of the complainants to prove his guilt on counts on which they did not give evidence. If you are the Supreme Court Justice writing the court's judgment how would you decide the appellant's contention? (25)

QUESTION 4

A. What is state privilege at common law? (2)

B. Outline the difference between public and private privilege. (4)

C. A, is fifteen (15) years old and is charged with assault. His mother is subpoenaed by the prosecution as a witness. She does not want to give evidence against her son and approaches you for advice. Outline the existing legal position and discuss what arguments might be put to the court on the mother's behalf.

(5)

D. Are police officers required to inform suspects of their right to remain silent and their right to legal representation before questioning them? You are also required to discuss whether the failure to warn a suspect of these rights would have any effect on the admissibility of evidence. (6)

E. Sabelo Dlamini's truck driven by his employee, Sifiso Sithole, is involved in a collision with a car driven by Bheki Mdluli. In a subsequent criminal trial Sifiso Sithole gives evidence for the Crown and Bheki Mdluli is convicted of negligent driving.

Meanwhile Sabelo Dlamini's insurer has instituted a civil claim against Bheki Mdluli, but by the time the civil trial starts, Sifiso Sithole is no longer employed by Sabelo Dlamini and cannot be traced. The Plaintiff (insurer), in order to prove Bheki Mdluli's negligence, intends to tender the record of Sithole's evidence given at the criminal trial as well as the criminal court's finding that Bheki Mdluli had driven negligently.

Discuss fully the admissibility of the two pieces of evidence which the insurer intends to adduce. (8)