

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
MAY, 2019

TITLE OF PAPER : **LAW OF EVIDENCE-
PRESENTATION OF EVIDENCE**

COURSE CODE : **LAW302**

TIME ALLOWED : **THREE (3) HOURS**

MARKS ALLOCATED : **100**

INSTRUCTIONS : **1. THE PAPER CONSISTS OF
FOUR QUESTIONS.**
2. ANSWER ALL QUESTIONS.

QUESTION 1

A. Fully discuss the requirements which must be met before an admission will be accepted into evidence. **(5 MARKS)**

B. Discuss what is meant by “a leading question” and the circumstances in which such questions will be allowed. **(3 MARKS)**

C. Briefly discuss the exceptions to the rule that evidence must be given orally by the witnesses in the presence of the parties. **(3 MARKS)**

D. What is meant by “documentary evidence”? Briefly outline the requirements for the admissibility of documentary evidence. **(3 MARKS)**

E. What is meant by proof of a document’s “authenticity” and when is it unnecessary to prove authenticity? **(3 MARKS)**

F. What is the effect of withdrawing a formal admission in criminal proceedings? **(2 MARKS)**

G. Write a brief note classifying presumptions in terms of their effect on the burden of proof. **(3 MARKS)**

H. What is the rule concerning the ability of a party to impeach the credit of a witness called by him or her? **(2 MARKS)**

I. What is a confession? **(1 MARK)**

[25 MARKS]

QUESTION 2

A.

Mbuso Thwala sues "Capital Autoworks" for damages resulting from faulty repairs to his truck. In the correspondence exchanged before action was instituted, Capital Autoworks's attorney wrote to Mbuso:

"We admit, without prejudice, that the work was done by an incompetent mechanic whom we subsequently fired and that the work was possibly faulty. However, we think that the contract can be interpreted to absolve us from liability. Nevertheless, we feel that we would prefer to settle the matter out of court and offer you again without prejudice, the sum of E5, 000.00 (Five Thousand Emalangi) in full and final settlement of your claim"

Mbuso rejects the offer and the matter proceeds to trial. At the trial, Mbuso tenders in evidence the letter written by the opposing side's attorney in order to prove the admission that the truck was badly repaired. The defendant's counsel objects on the ground that it was a "statement without prejudice".

You are the trial judge. Discuss fully how you would rule on the objection.

(10 MARKS)

B.

You are prosecuting the rape of a 14 year old girl. The child has told you that she is afraid of the accused and would be more confident giving evidence through an intermediary. You also have a social worker's report recommending the use of an intermediary as any 14 year old would find it traumatic to testify in such circumstances.

Outline the argument you would present to the court in applying for the child's evidence be tendered through an intermediary. Your argument should anticipate any objections from defence counsel.

(15 MARKS)

(25 MARKS)

QUESTION 3

Section 11 (1) of the Opium and Habit –Forming Drugs Act, 1922 provides:

‘ If in any charge under this Act it is alleged that dagga was being cultivated, evidence that such dagga was found growing in cultivated land shall be sufficient proof that it was being cultivated, and that it was being cultivated with the knowledge of the owner or occupier of such land, unless in either case, the contrary is proved’.

On 7 December 2018 the Royal Eswatini Police Service conducted a raid on Philani Gumbi’s farm and found dagga growing in Philani’s fields.

Philani is charged with cultivating dagga contrary to Section 2 of the Opium and Habit – Forming Drugs Act, 1922. His defence is that he was unaware that dagga was being cultivated on his land.

The Crown intends to rely on Section 11 (1) of the Act at Philani’s trial. Philani engages your services. He instructs you to make an application to the High Court for an order that Section 11 (1) is inconsistent with section 21 (2) (a) of the Constitution.

What argument will you advance in the High Court? Your answer must include a discussion of relevant legal issues.

(25 MARKS)

QUESTION 4

A. What are the standards to be applied at the conclusion of a trial to determine whether a litigant has proved his or her case? Discuss both civil and criminal proceedings and indicate how the standards are applied when circumstantial evidence is evaluated. **(6 MARKS)**

B. Indicate how the following factors affect the evaluation of evidence:

- (i) The witness's demeanour when he or she testifies. **(4 MARKS)**
- (ii) The litigant's failure to call an available witness. **(2 MARKS)**
- (iii) The fact that a witness told a lie in or out of court. **(3 MARKS)**

C. Discuss the competence and compellability of co-accused to give evidence for or against one another. **(5 MARKS)**

D. What is evidence by commission and in what circumstances is such evidence tendered? **(5 MARKS)**

(25 MARKS)