



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW301

TITLE OF PAPER: EVIDENCE-GENERAL PRINCIPLES

TIME ALLOWED: 3 HOURS

Instructions

Answer all questions

Special Requirements

None

Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

QUESTION 1

A.

Sicelo Mdluli is accused of bribery. The Crown calls his divorced wife as a witness and asks her what Sicelo told her, when they were still married, about the transaction on which the charge is based. Sicelo is aware of the fact that he made certain admissions to her and now, through his lawyer, objects to the presentation of her evidence by virtue of sections 249 and 250 of the Criminal Procedure and Evidence Act (CP&E). The trial overrules his objection and the witness testifies about the admissions Sicelo made.

Eventually Sicelo gives evidence. When cross examined about the admissions he made to his former wife, he refuses to answer, once again relying upon sections 249 & 250. Was Sicelo entitled to prevent the examination in chief of his former wife and cross examination of himself about the admissions he made.

[10]

B.

You represent Thulani Mthethwa who has been charged with robbery. You ask the Crown to make available copies of the statements of all the Crown witnesses. The Director of Public Prosecutions (DPP) refuses to release the statements on the basis that the statements are privileged. Thulani instructs you to mount proceedings for an order compelling the DPP to release the witness statements. Outline the argument you will make to the Court in support of the application.

[10]

C.

Dr. Mandla Mazibuko 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's sister who says: 'shortly before she died my sister complained of pain and stomach cramps. She told me that the accused had impregnated her and given her medicine to induce an abortion- but that now she thought the medicine was poison'. Is the sister's evidence admissible?

[5]

QUESTION 2

Dumisile Dladla is charged with 3 counts of murder, it is alleged that Dumisile murdered two of her husbands and her 21 years old son Uminathi.

In respect of count 1 the indictment alleges that on or about 10 January 2008, at or near Kwaluseni, in the Manzini Region, Dumisile unlawfully and intentionally killed her husband, Wenzile Shongwe by poisoning him with strychnine.

Secondly the indictment alleges that on 6 March 2013, at or near Logoba, in the Manzini Region, Dumisile unlawfully and intentionally killed her second husband, Velaphi Simelane, by poisoning him with strychnine.

Thirdly it is alleged that on 17 April 2017, at or near Fairview, in the Manzini Region, Dumisile unlawfully and intentionally killed her son Mabhengeta Shongwe, by administering him poison, namely arsenic.

The Crown intends to use the evidence in each count to prove that Dumisile is guilty of the 2 other counts. Discuss fully whether the evidence on one count can be used to prove Dumisile's guilt on the other counts. [25]

QUESTION 4

- (a) What are the main functions of the law of evidence? [2]
- (b) What is character evidence? [2]
- (c) What is opinion evidence? [2]
- (d) Write a brief note distinguishing between:
- (i) *facta probanda* and *facta probantia*; [5]
 - (ii) onus of proof and evidential burden. [5]
- (e) What are the 2 cardinal roles of logic which govern the admissibility of circumstantial evidence? [5]
- (f) How is relevance determined in the law of evidence? [2]
- (g) When will opinion evidence be admissible? [2]