



UNIVERSITY OF ESWATINI
FIRST SEMESTER RE-SIT EXAMINATION PAPER, JANUARY 2020
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
COURSE CODE: LAW301
TITLE OF PAPER: LAW OF EVIDENCE: GENERAL PRINCIPLES
TIME ALLOWED: 3 HOURS

Instructions

1. 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

You are the Crown Counsel in a case in which the accused is charged with six counts of indecent assault on girls below the age of eighteen. The complainants are the only witnesses on each count and vary in age from eleven to fourteen years. The evidence on each count shows that the offences took place within a space of four weeks at the accused's home on weekday afternoons. The accused enticed the complainants into his home with promises of teaching them how to code.

Can the evidence of the complainants be used to prove the accused's guilt on counts on which they did not testify? Discuss fully **25 MARKS**

QUESTION 2

- (a) What is character evidence? (2)
- (b) What is the general rule regarding the admissibility of evidence of the accused's good character in criminal cases? (2)
- (c) What requirements must be met before the opinion of an expert witness will be admitted into evidence? (4)
- (d) What is the *Hollington v Hewthorn* rule? (2)
- (e) When can a witness in criminal proceedings claim privilege against self-incrimination? (3)
- (f) Outline the differences between public and private privilege (4)
- (g) Write a brief note distinguishing between
 - (i) conclusive proof and prima facie proof; (4)
 - (ii) circumstantial and direct evidence. (4)

25 MARKS

QUESTION 3

A.

Setsabile is charged with the offence of arson. The crown alleges that Setsabile with the intention of injuring others, set fire to the Evangelical Church Building in Manzini, the building caught fire and damage was occasioned.

At the criminal trial Sibongakonkhe gave evidence for the Crown and Setsabile was convicted of arson. Meanwhile the Evangelical church's insurer has instituted a claim for damages against Setsabile. However the time the civil trial commences, Sibongakonkhe's whereabouts cannot be traced.

The insurance company in order to prove on the part of Setsabile, now tenders the transcript of Sibongakonkhe's testimony given at the criminal trial. Secondly the insurer wants to present in evidence the criminal court's finding that Setsabile intentionally set fire to the church.

You are the trial judge in the case of the Insurer and Setsabile. How would you decide the issue of admissibility of the two items of evidence which the Insurance Company wishes to present? Your decision must discuss the principles on which admissibility depends. (20)

B.

Dumisani is sixteen years old and is charged with assault. His father is subpoenaed by the crown as a witness. He does not want to testify against his son and approaches you for advice. Outline the arguments you would advance to the Magistrate on the father's behalf.

(5)

25 MARKS

QUESTION 4

A.

Sibusiso Tsabedze is charged with rape. The alleged victim testifies. She tells the court where and how the crime occurred and identified Sibusiso as her rapist. Cross-examination of the complainant centered around the identification of Sibusiso. The offence had taken place at night and it was put to the victim that she could not have properly observed her teacher's appearance.

After the complainant completed her evidence the crown called her mother and she states that the complainant had come to her after the offence and told her what had happened. The mother also gives evidence about what the complainant had said about the physical features of her attacker.

The crown's third witness is a police detective who informs the court that the alleged victim had pointed out Sibusiso at an identification parade. Sibusiso's legal representative objects to the admission of what the complainant told her mother and to the admissibility of the identification evidence.

You are the presiding judicial officer of Sibusiso's rape trial. How would you rule on the objections? Your ruling must include a full discussion of the applicable principles.

(20)

B.

The issue is whether the defendant drove recklessly. A witness states: 'I observed the incident from my office window. The defendant's car was proceeding from west to east. I could see that he was in a hurry and was prepared to weave through the traffic, despite the presence of pedestrians. I had a feeling that an accident would take place, and when it happened I also had no doubt who was responsible. It was the defendant.' Is this evidence – or any part of it – inadmissible?

(5)

25 MARKS