

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER 2009

TITLE OF PAPER LAW OF EVIDENCE

COURSE CODE L302

TIME ALLOWED THREE (3) HOURS

TOTAL MARKS 100

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR**

**PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN
ANSWERING THIS EXAMINATION PAPER**

Answer ONLY FOUR questions

**(a) Please ensure that the time you devote to each answer is
proportionate to the marks allocated.**

(b) Where appropriate, reference must be made to relevant case law.

This paper consists of 6 pages

QUESTION 1 (25 marks)

- (a) Explain the traditional approach regarding the admission of opinion evidence. (5 marks)
- (b) Discuss the decision in *S v Ramgobin 1986 4 SA 117 (N)* in relation to the admission of opinion evidence. (5 marks)
- (c) An accused is charged with murder in that he had pushed two people off a ledge of a hotel that was under construction. When asked about the circumstances of the double murder, the accused stated that he was so angry at the time that he had no recollection of the event. A psychiatrist is called by the defence to give evidence in regard to the accused's state of mind. On the basis of these facts, answer the following questions.
 - (i) Discuss the factors that the court will take into consideration in order to determine whether the psychiatrist is qualified to be an expert witness. (7 marks)
 - (ii) Discuss whether it is permissible for the psychiatrist to state in evidence that the accused in "not guilty". (8 marks)

QUESTION 2 (25 marks)

- (a) State the reasons for the exclusion of hearsay evidence. (5 marks)
- (b) Discuss the decision in *R v Obert Sithembiso Criminal Case No. 41/2000 (HC)* unreported at 7 in regard to the admissibility of computer evidence in Swaziland. (5 marks)
- (c) B is charged with the murder of C, on whom B had produced an abortion. Before her death, C made the following statement to the nurse who was attending to her. "I am going to die. B is the cause of it all". Soon after making this statement, C died. Medical evidence supports the fact that at the time of making this statement, C was in fact dying. On the basis of these facts, answer the following questions.
- (i) Discuss whether the evidence of the nurse regarding the statement made by C is admissible. (7 marks)
- (ii) Discuss whether the evidence of the doctor is admissible regarding the statement made by C, if the doctor was not present when C made the statement but the nurse had told the doctor what C had said. (8 marks)

QUESTION 3 (25 marks)

- (a) Discuss the basic concepts regarding the meaning of the term “evidence”. (15 marks)
- (b) With specific reference to authority, discuss the following
 - (i) the meaning of relevance (5 marks)
 - (ii) the distinction between logical and legal relevance. (5 marks)

QUESTION 4 (25 marks)

Answer the following questions in regard to the evidence of an expert

- (a) Describe the circumstances in which a person will be regarded as an expert witness. (8 marks)
- (b) Discuss the factors that a court will take into consideration when it is assessing the qualifications of an expert witness. (8 marks)
- (c) Discuss the admissibility of evidence regarding handwriting. (9 marks)

QUESTION 5 (25 marks)

(a) Discuss the legal burden as distinguished from the evidentiary burden.
(10 marks)

(b) Discuss the cautionary rule as it applies to a single witness. (15 marks)

QUESTION 6 (25 marks)

(a) Discuss critically the general formulation of the rule regarding the exclusion of opinion evidence. (15 marks)

(b) Discuss the manner in which dispute fingerprints and palm prints may be proved by evidence of opinion. (10 marks)