

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 2018

TITLE OF PAPER : LAW OF EVIDENCE

COURSE CODE : LAW 302

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : 1. ANSWER ANY FIVE (5) QUESTIONS

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Question 1

Mark is jointly charged with murder and fraud. The deceased, Martha, was a young woman who worked as an accountant at Mark's business. The medical evidence reveals that she died of poison. She was one of two persons who were aware of Mark's fraudulent conduct with his business' money matters. The other person, Veronica, is Mark's divorced wife to whom he was married at the time of the illegal conduct. The state calls the deceased's mother, who says "Shortly before she died my daughter complained of pain and cramps in the stomach. She told me that the accused had made her pregnant and had given her medicine to induce a miscarriage – but it was obviously poison and not medicine".

- (a) Fully discuss the admissibility of the mother's evidence. **5 marks**

- (b) The prosecutor calls Veronica as a witness and asks her what Mark told her on a certain day (when they were still married) about some of the transactions on which the fraud charge is based. Mark is aware of the fact that he had made certain admissions to her and now, through his advocate, objects to the presentation of her evidence. Will he be successful with his objection? Fully discuss. **5 marks**

- (c) Distinguish between an informal and formal admission. **5 marks**

- (d) Explain what happens during a "trial within a trial". **5 marks**

Question 2

- i. Fully discuss the operation of legal professional privilege between a client and his/her legal advisor. **10 marks**

- ii. Fully discuss the concept of evidentiary burden **10 marks**

Question 3

Identify and discuss five rebuttable presumptions of law **20 marks**

Question 4

- (a) Define hearsay evidence and state the relevant statutory provisions that govern the subject in Swaziland. **3 marks**
- (b) State the hearsay general rule **2 marks**
- (c) Critically analyse the admissibility of statutory exceptions listed in The English Criminal Justice Act of 2003 in local courts. **5 marks**

- (d) In the course of extensive and serious negotiations between A, B and C, A's lawyer reminds the other parties that his client's disclosures and statements are made on a "without prejudice" basis.
 - i. What is the effect and rationale for the effect of the words "without prejudice"? **3 marks**
 - ii. Would the non- utterance of the words "without prejudice" have altered the effect in 1 above? Explain. **2 marks**
 - iii. Identify and briefly discuss the requirements that give this effect to communication between A and his lawyer **5 marks**

Question 5

Fully discuss the order and manner of presenting and testing evidence in a Civil trial. **20 marks**

Question 6

Write short notes on the following:

- i. Single accomplice witness evidence **5 marks**
- ii. Plea of guilty at Magistrate's Court other Principal Magistrate's Court **5 marks**
- iii. Res Gestae **5 marks**
- iv. Admissions by Conduct **5 marks**