

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LAW OF EVIDENCE – LLB 206

NOVEMBER 2018

DURATION: THREE HOURS

28 NOVEMBER 2018

INSTRUCTIONS TO CANDIDATES

1. Answer **two** questions from **Section A** and **two** questions from **Section B**.
2. **Material allowed in exam**
 - i) Civil Evidence Act [Chapter 8:01];
 - ii) Criminal Procedure and Evidence Act [Chapter 9:07];
 - iii) Constitution of Zimbabwe, 2013.

INFORMATION FOR CANDIDATES

- (a) Each question carries **25** marks.
- (b) Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
- (c) Cell phones are not allowed into the examination room.
- (d) Begin each answer to a full question on a fresh page.

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

SECTION A

QUESTION 1

Mrs. Mawere was claiming for the loss of support of her husband in a matter in which her husband was known to have fallen whilst on duty at his work place. The husband fell into an acid bath which was an essential part of chrome-plastic process. At the time of the accident, he was not wearing any protective clothing which the firm provided for their employees engaged in this work. The defendant company stated in its defence to the claim that they had not been guilty of any negligence since they provided all the required safety clothing. The defendant company also said that the deceased was negligent by failing to keep a proper look out for his own safety. A few days after the accident, Mr. Mawere died from the acid burns he received. No one had witnessed the accident. The defendant company sought to advance evidence that Mr. Mawere had said to other employees of the company who had gone to see him soon after the accident "I should not have tried to do it..... I was supposed to wear protective clothing."

Required

With reference to relevant authorities, comment on the admissibility of the evidence.

[25 marks]

QUESTION 2

Discuss the admissibility of the following pieces of evidence;

- a) Tinashe, a 14-year-old boy was assisted by Chipo to do his homework before going to his home. Tinashe went home late and his sister asked him why he was late. After persistent questions, Tinashe told his sister that Chipo had led him to her bedroom and made Tinashe fondle her breasts and private parts. Tinashe also showed his sister a US\$10 note that he said Chipo had given him. The sister then made a report to her parents who in turn made a report to the police. Chipo was charged with indecent assault. Tinashe's sister and their parents are called as witnesses. [13 marks]
- b) Mr. Matiza is a legal practitioner. He met his client, Takunda in a beerhall. During the course of conversation, Takunda asked for legal advice whilst they were drinking beer. Takunda wanted to know if he was entitled to compensation in terms of the War Victims Compensation Fund. Takunda told Mr. Matiza that during the war, he was in France. Mr. Matiza advised Takunda not to claim such compensation as he was not a war veteran. Takunda then proceeded to claim for such compensation and he was arrested. Mr. Matiza is one of the witnesses in the matter of fraud against Takunda. [12 marks]

[TOTAL: 25 marks]

QUESTION 3

Simanga claimed seduction damages from John. John denied that he was the first person to have sexual relations with Simanga as alleged. Simanga's legal representative called Gladys who informed the Court that she was seduced by John some 3 months earlier and as a result, she was pregnant. A further witness, Vimbai told the Court that she had also been impregnated by John and as a result, John was paying maintenance for his 6-month old baby. John requested to call Frank in order to show that he had sexual intercourse with Simanga four days after the day of the alleged seduction.

Required

Discuss the admissibility of all the evidence in the above matter.

[25 marks]

SECTION B

QUESTION 4

Discuss the judicial approach to the following;

a) Evidence of accomplices.

(12 marks)

b) Evidence of young children.

(13 marks)

[TOTAL: 25 marks]

QUESTION 5

Evaluate the Supreme Court's approach in the case of **Maparanyanga V Sheriff of the High Court and Ors SC 132/02** with reference to the application of the parole evidence rule.

[25 marks]

QUESTION 6

Discuss the ways in which the Constitution of Zimbabwe affects the rules of evidence.

[25 marks]

[END OF EXAMINATION – 100 MARKS]