



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 206  
COURSE TITLE : Law of Evidence  
DURATION : 3 Hours  
LEVEL : 2.2  
DATE :

08 FEB 2022

**INSTRUCTIONS TO CANDIDATES:**

1. Answer **one** question from **section A** and any **three (3)** questions from **Section B**.
2. Notes, handouts and textbooks are not allowed into the examination.
3. Begin each answer to a full question on a fresh page.
4. You are required, to write legibly.
5. You are directed to avoid using short hand and poor grammar.
6. During the course of your answers you must refer to any relevant case law, legal principles and legislation that may be applicable.
7. No cellphones are allowed into the examination room as well as all data storing devices. Failure to comply will lead to automatic disqualification.

## SECTION A

### QUESTION 1

James marries Samantha who has a 9- year old daughter from her first marriage. A few months after the marriage the daughter alleges that James raped her and he is prosecuted before the Bindura Magistrates' Court. The prosecution wishes to call Samantha as a witness but Peter objects saying that his wife cannot give evidence against him.

Advise the presiding magistrate on the validity of James' objection?

[Total 25 marks]

### QUESTION 2

In accordance with the doctrine of precedent the supreme court is bound by its previous decisions. This principle is well illustrated in the case of *S v Banana* 2000 ZLR 667S where the court revisited the accepted longstanding approach of the Zimbabwean courts towards a number of evidentiary issues raised in that case

In light of the pronouncements in the *Banana case* explain the approach of our courts in relation to the following important evidentiary matters.

(a) admissibility of similar fact evidence.

(15)

(b) the approach to the evidence of a complainant in sexual assault cases.

(10)

[Total 25 marks]

## SECTION B.

### QUESTION 3

The following is stated in the headnote to *S v Mazhambe & ORS* 1997 (2)

*"If the witness for the prosecution at a criminal trial gives evidence that is inconsistent with his previous statement to the police, and the inconsistency is such as to damage the State's case, the prosecutor must act in order to discredit the damaging testimony. There are two methods of so acting"*

Describe the two methods and for each of them explain its purpose in relation to the evidential value to the prosecution case

[Total 25 marks]

#### **QUESTION 4**

In a civil suit before the High Court in Bulawayo, the Plaintiff claimed damages for breach of contract. The contract involved a highly complex financial transaction between the parties. The Defendant disputed the Plaintiff's interpretation of the contract. At the trial of the matter, each party called its own experts to deal with the question of the proper interpretation of the contract. The evidence led in court by the parties dealt in the main with the correct interpretation of the contract between the parties. The judge is confronted with conflicting evidence of the parties' expert witnesses on the correct interpretation of the contract. As the judge's research assistant, you have been asked to assist in dealing with this issue.

- a) With reference to case law and/or statute law explain the extent to which, if any, the courts in Zimbabwe can rely on expert witness' evidence. (15)
- b) On the facts set out above, to what extent can the court rely on the expert witnesses' evidence in interpreting the contract? (10)

[Total 25 marks]

#### **QUESTION 5**

The prosecution was unable to locate their key witness and no realistic chance of locating him exists. Apart from the evidence from this witness, the prosecutor notices the police docket contains statements with direct evidence implicating the accused by

- (a) His legal wife  
(b) His erstwhile lawyer  
(c) His now convicted accomplice

Advise the prosecutor on admissibility of evidence

[Total 25 marks]

#### **QUESTION 6**

Using case law and/or relevant statutory provisions outline and explain the circumstances in which character evidence is admissible in evidence in courts in Zimbabwe.

[Total 25 marks]

**END OF PAPER**