

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW**

68

**MAIN EXAMINATION PAPER, MAY 2011**

**TITLE OF PAPER : LAW OF EVIDENCE**  
**COURSE CODE : DL031**  
**TIME ALLOWED : THREE (3) HOURS**  
**TOTAL MARKS : 100**  
**INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS**

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

**Question 1**

69

Mrs. D was carrying her eight (8) month old baby on her back. Her husband, Mr. D came home from work. Almost immediately they had a fight. Mr. D got very angry and threatened to assault Mrs. D. Eventually he got a knob-stick and hit her on the head. Mrs. D turned away with the intention of running away from him. As that was happening, Mr. D struck the baby on the head with the knob-stick and about three (3) hours later the baby died. Mr. D was arrested and charged with culpable homicide and assault.

(a) Mrs. D intends to present evidence that she has been previously assaulted by Mr. D apart from the assault in respect of which he has been charged. How would you define the evidence of the previous assault? (4 marks)

(b) During Mr. D's trial what is it that he can do that may allow Mrs. D to present evidence of the previous assault? (10 marks)

(c) If Mrs. D sues Mr. D for divorce successfully and subsequently institutes civil proceedings against her ex-husband for the assault, would the record of the criminal proceedings in which Mr. D was convicted for the assault be admissible in the subsequent civil proceedings? (11 marks)

(Total marks= 25)

**Question 2**

How does the legal professional privilege apply in respect of documents on which a party is claiming the privilege? (25 marks)

**Question 3**

70

- (a) Discuss the admissibility of documentary evidence. (15 marks)
- (b) Discuss the presumption applicable to a date on a document. (4 marks)
- (c) Under what circumstances may the rule against hearsay evidence be relaxed?  
(6 marks)  
(Total marks = 25)

**Question 4**

- (a) How qualified should an expert be to be regarded as such and what is the scope of the evidence of an expert? (12 marks)
- (b) In relation to previous consistent statements discuss the exception that applies to sexual cases only. (13 marks)  
(Total marks= 25)

**Question 5**

T is appearing before the High Court on a charge of murder. He pleads "not guilty" to the charge. The only evidence against him is a statement which he made to a magistrate in which he states how he committed the crime. The State wants to use this statement against T on the basis that it is a confession.

You are the Counsel for the State. Make submissions before the court stating why you say the statement is a confession and consequently admissible, and whether or not the court can convict on the basis of the confession alone. (25 marks)

**Question 6**

71

Write notes on the following:

- (a) Trial within a trial. (5 marks)
  - (b) The order of evidence. (5 marks)
  - (c) Plea of "guilty" at High Court. (5 marks)
  - (d) Witnesses called by a court. (10 marks)
- (Total marks = 25)