

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW**

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**SUPPLEMENTARY EXAMINATION, JULY 2011**

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

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GRANTED BY THE INVIGILATOR TO DO SO.**

### Question 1

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In a civil trial, plaintiff takes to the stand. After giving the court his full names, he begins testifying being led by his attorney who asks questions which suggest the required answers. The witness goes further to read from his statement, his excuse being that he has forgotten some of the things he wrote in the statement.

The judge stops the proceedings and informs the attorney for plaintiff that there is something seriously wrong with the way the evidence is being presented.

You are the attorney for respondent. The judge calls upon you to make submissions on what has gone wrong. Make full submissions. (25 marks)

### Question 2

(a) In defamation proceedings the plaintiff informs the court that she intends to present evidence of her good character. She also informs the court that she will be calling her 10 year old niece to testify to the merits of the matter against the defendant.

(i) Is the plaintiff allowed to present evidence of her good character? (2 marks)

(ii) Is the plaintiff's 10 year old niece a competent witness? (8 marks)

(b) What is 'absolution from the instance'? (11 marks)

(c) Is there a privilege applicable to statements of witnesses? (4 marks)

(Total marks = 25)

**Question 3**

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Your client, a known criminal, comes to you for advice as usual. He informs you that he intends seeking legal advice from you regarding how he may avoid paying taxes which are due and payable to the government of Swaziland. He informs you that as usual, he would like any communication between the two of you regarding this matter to be confidential.

- (a) Explain to your client the nature of legal professional privilege. (20 marks)
- (b) Will the communication between yourself and your client regarding how to avoid paying the taxes be protected by the privilege? (5 marks)
- (Total marks = 25)

**Question 4**

- (a) What are similar facts? (2 marks)
- (b) Discuss exceptions to the similar-fact rule. (23 marks)
- (Total marks= 25)

**Question 5**

- (a) Discuss the term "estoppel by conduct". (10 marks)
- (b) What effect does the giving of false evidence by an accused person during his or her trial have on his or her case? (8 marks)
- (c) Discuss the term "prior identification" in relation to previous consistent statements. (7 marks)
- (Total marks= 25)