

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, MAY 2013

TITLE OF PAPER : LAW OF EVIDENCE II
COURSE CODE : DL040
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

You appear for the prosecution before the High Court in a murder trial. This is a matter which was heard before the same court, but in the previous trial the accused person, a male of 23 years of age, was discharged by the Judge because there was no prosecuting Counsel to prosecute him on the day. The Director of Public Prosecutions has directed you to take over the prosecution of the matter to finality. When the charge is read to the accused he pleads *autrefois acquit*. The Judge calls upon you to address her in response to the accused person's plea. Before doing so, you inform the court that you will present evidence of a statement made by the deceased, a male 25 of years of age, in which he states that he was stabbed by the accused person in the process sustaining serious injuries. These are the injuries which eventually led to the deceased's death. The attorney for the accused indicates that he will object to that evidence on the basis that it is inadmissible hearsay. The Judge further orders you to address her on that aspect as well.

Address the court fully, clearly stating whether or not it is proper to continue with the trial. (25 marks)

Question 2

Discuss.

(a) Estoppel by deed. (15 marks)

(b) Admissions by conduct. (10 marks)

(Total marks = 25)

Question 3

Write short notes on the following.

(a) Evidence on affidavit. (5 marks)

- (b) Credibility. (5 marks)
- (c) Order of evidence. (5 marks)
- (d) Restriction of professional privilege in criminal cases. (5 marks)
- (e) Extension of other privileges in relation to marital privilege. (5 marks)
- (Total marks = 25)

Question 4

- (a) How does the privilege against self-incrimination apply? (20 marks)
- (b) How does the presumption applicable to a date on a document apply?
(5 marks)
- (Total marks = 25)

Question 5

Discuss vicarious admissions. (25 marks)

Question 6

- (a) Who has to begin presenting evidence in a civil trial? (15 marks)
- (b) Under what circumstances may a court call a witness? (10 marks)
- (Total marks = 25)