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**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, DECEMBER 2013

TITLE OF PAPER : LAW OF EVIDENCE

COURSE CODE : L302

TIME ALLOWED : THREE (3) HOURS

TOTAL MARKS : 100

**INSTRUCTIONS : ANSWER QUESTION 1 AND THREE (3)
OTHER QUESTIONS**

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GRANTED BY THE INVIGILATOR TO DO SO.**

Question 1 (COMPULSORY)

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X and Y are directors of Masakhane Investments (Pty) Ltd. They are not in good terms because of pending litigation between them. X is suing Y on the basis that Y has stolen shares in the company. The allegation is that Y has forged company documents to the extent that he is now shown to be a majority shareholder whereas the two had equal shareholding.

At the trial, X indicates to the court that she will present evidence of her good character in order to show the court that she is not fabricating a story against Y and to justify the amount she claims in damages. She acknowledges that her claim could have been much less if it were not be for her good character. The attorney for Y argues that evidence of the bad character of X will be presented in response to X's evidence of her good character. Y's attorney also tells the court that the evidence of the alleged forgery of documents by Y is irrelevant to the proceedings.

At the trial, X takes to the witness box and after introducing herself, informs the Judge that she will not take an oath as she does not believe in God and will therefore testify unsworn. She then starts reading from a statement which had been prepared by herself and her attorney for the trial.

As the Judge, determine the admissibility of the evidence being presented by X and the evidence intended to be presented by the parties. (25 marks)

Question 2

Your client has been charged with murder. He appears before the High Court for trial and duly indicates that he intends pleading 'not guilty' to the charge. The prosecution indicates to you that part of the evidence they have against your client is a statement made by your client to a magistrate. They say this is a confession and they will use it

against your client. Your client instructs you that the statement was not made freely and voluntarily. ¹⁴⁷

During the trial, the Judge indicates that he is prepared to admit the statement but before doing so, gives you the opportunity to address him on a way forward. Address the court fully. (25 marks)

Question 3

(a) Is a spontaneous statement admissible? (20 marks)

(b) Can a statement of intention be used against an accused? (5 marks)

(Total marks = 25)

Question 4

Your client, a known criminal comes to you for legal advice. He informs you that he has been evading paying customs duties ever since he started operating his business. He informs you that it seems things will change soon now that the Swaziland Revenue Authority (SRA) is in charge of collecting revenue for the Government. He informs you that he wants to continue enjoying this 'benefit.' He further instructs that should officers from SRA ask you anything about his business dealings you must claim professional privilege.

Discuss the nature of professional privilege and whether or not, in the given circumstances, a court would uphold a claim of such privilege. (25 marks)

Question 5

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(a) P presents himself as a sale representative of an unnamed company based in Mauritius which sells electronic gadgets. He tells people that they can place orders with him for the latest available gadgets and after paying a deposit which is equivalent to half the purchase price, deliveries would be made within two (2) weeks. Q places an order for gadgets to the value of E40 000.00. He duly pays the E20 000.00 deposit and waits for his gadgets to arrive. Six (6) weeks elapse and there is no delivery. Q contacts P with a view to find out what has happened. P states that he is not to blame, but the company. He states that he is not liable in any way. Q decides to sue P for the recovery of his money.

How should the court deal with this matter?

(10 marks)

(b) If one is suing another on the basis of a document, and the person being sued disputes the very existence of the document, what should the one suing do? (15 marks)

(Total marks = 25)

Question 6

“An admission made by a person binds the person who has made it. However, there is a certain category of admissions which bind another person other than the maker.” Discuss these statements. (25 marks)