

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW  
DIPLOMA IN LAW**

**SUPPLEMENTARY EXAMINATION, JULY 2016**

|                       |          |                                  |
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| <b>TITLE OF PAPER</b> | <b>:</b> | <b>LAW OF EVIDENCE II</b>        |
| <b>COURSE CODE</b>    | <b>:</b> | <b>DL040</b>                     |
| <b>TIME ALLOWED</b>   | <b>:</b> | <b>THREE (3) HOURS</b>           |
| <b>TOTAL MARKS</b>    | <b>:</b> | <b>100</b>                       |
| <b>INSTRUCTIONS</b>   | <b>:</b> | <b>ANSWER FOUR (4) QUESTIONS</b> |

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

### **Question 1**

A person is charged with the theft of a motor vehicle which was parked in the parking lot of the headquarters of the Swaziland Revenue Authority (SRA) in Mbabane. At the exit of the parking lot is a boom gate which is manned by a security guard. When a vehicle belonging to the SRA exits the parking lot the guard has to record in a book the registration of the vehicle, its make, the full names of the driver and the time it exits. During the trial the prosecution discovers that the guard who recorded the details of the relevant vehicle and driver is deceased but they have possession of the book in which details are clearly written.

In these circumstances, does the prosecution have any evidence they can use against the person who is being prosecuted? (25 marks)

### **Question 2**

(a) Under what circumstances may an order for absolution from an instance be granted? (15 marks)

(b) Under what circumstances may a person seek the protection of section 41 of the Criminal Procedure and Evidence Act 67 of 1938? (10 marks)

(Total marks = 25)

### **Question 3**

(a) Generally, witnesses are called by parties to proceedings. Under what circumstances may a court call witnesses? (15 marks)

(b) May a person who has been proved to have made a valid confession be convicted on the basis of no evidence other than the confession? (10 marks)

(Total marks = 25)

**Question 4**

In a trial before the Mbabane Magistrate's Court it turns out that the Crown has one witness who has implicated the accused person with the crime. The presiding magistrate is not sure how to proceed with the matter. Should the magistrate convict or not?

(25 marks)

**Question 5**

(a) How does the cautionary rule apply in sexual cases? (10 marks)

(b) Under what circumstances may a court relax the rule against hearsay evidence?  
(10 marks)

(c) What is the presumption applicable to a date on a document? (5 marks)

(Total Marks = 25)