

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION, JULY 2016**

**TITLE OF PAPER : LAW OF EVIDENCE**  
**COURSE CODE : L302**  
**TIME ALLOWED : THREE (3) HOURS**  
**TOTAL MARKS : 100**  
**INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS**

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

### Question 1

You have been instructed by the Director of Public Prosecutions to advise police in the investigation of a matter involving alleged fraudulent ATM withdrawals to the value of E50 000. The first suspect is A who has been arrested by the police. The evidence against him is CCTV footage of him captured by the various cameras at the ATM's where he carried out withdrawals. A has told police that he was given the fraudulent cards to carry out the withdrawals by B and is willing to testify against B. Police arrest B as well and co-charge him with A.

- (a) Would the evidence against A be admissible against him? (5 marks)
- (b) Would it be legally possible for B to compel A to testify in his favour and not incriminate him with the offence? (10 marks)
- (b) Would it be possible in these circumstances to have A testify against B? (10 marks)
- (Total marks = 25)

### Question 2

C threatens to shoot and kill D during an argument between the two (2) of them. The following day D is found dead with gun shot wounds.

- (a) Will the evidence of a witness to the effect that C had threatened to shoot and kill D be admissible? (10 marks)
- (b) If C were to present evidence of a statement he made which seeks to prove that he is not the one who shot and killed D, would such be admissible. (5 marks)

(c) Would the evidence of a statement by D that C had threatened to shoot and kill him be admissible? (10 marks)

(Total marks = 25)

### **Question 3**

A lawyer is being sued by a client for breach of a written contract in that he failed to carry out instructions that had been given by the client in relation to a business deal thus resulting in a loss to the client. The lawyer is a senior partner in a law firm. The client contemplates suing the whole law firm. In his defence, the lawyer argues that the client would be unable to sue the whole law firm because he dealt with him only and that the client must prove the contract.

Discuss the legal position.

(25 marks)

### **Question 4**

Under what conditions are spontaneous statements admissible? (25 marks)

### **Question 5**

In an indecent assault trial a witness testifies that on the day the offence was committed the complainant approached her crying and informed her about what the accused had done to her. The defence strongly objects to this evidence arguing that it is not relevant and that it is presented to poison the mind of the court. Is this evidence admissible?

(25 marks)