

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

**SUPPLEMENTARY EXAMINATION, JULY 2017**

**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**

A regular client approaches you seeking legal advice. He informs you that he has been fraudulently importing fake jewellery from China for a number of years making a lot of money in the process. He further informs you that he suspects that he might be caught if he does not change the way he has been conducting his business. He states that he has thought of a new way he could conduct his business to ensure minimum risk of detection. He further states that this new way will require that he gets assistance from you to falsify certain documents.

Is such communication between you and your client protected by the legal professional privilege? (25 marks)

### **Question 2**

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

### **Question 3**

You are leading the evidence of a plaintiff before the Mbabane Magistrate's Court. The witness indicates that he has forgotten what he wrote in his statement. To aid the witness you put questions to the witness which give him a clue on what to say next. The attorney for the defendant objects to the way you are leading the evidence on the basis that you are asking leading questions. The magistrate calls on you to address her on the following two (2) issues:

(a) Are you permitted to ask the witness leading questions? (10 marks)

(b) At this stage is it possible for the witness to remind himself of the contents of his statement? (15 marks)

(Total marks = 25)

#### Question 4

You appear for the prosecution in a trial before the Manzini Magistrate's Court. At the commencement of the trial the accused person enters the plea of *autrefois acquit*. The magistrate orders you to address him on the plea before you are permitted to present evidence.

Address the court fully.

(25 marks)

#### Question 5

Write short notes on the following:

(a) Admission by silence in criminal cases.

(5 marks)

(b) Statements which prove physical sensations.

(5 marks)

(c) Declarations by testators as to contents of their wills.

(5 marks)

(d) The presumption of regularity.

(5 marks)

(e) Extenuating circumstances.

(5 marks)

(Total Marks = 25)