

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW**

**MAIN EXAMINATION PAPER, DECEMBER 2016**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>LAW OF EVIDENCE</b>
<b>COURSE CODE</b>	<b>:</b>	<b>L302</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 ANY FOUR (4) QUESTIONS</b>

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

### **Question 1**

In a civil trial before the High Court a doctor testifies in relation to injuries sustained by the plaintiff. The doctor testifies that in his opinion the defendant intended to inflict grievous bodily harm on the plaintiff when considering the nature of the injuries and the fact that they were inflicted on the neck.

The defendant's attorney objects to the doctor testifying because she alleges that they had not known that he would testify, she also objects to the doctor being referred to as an expert and also objects to the content of his testimony.

(a) Is the doctor properly before court if the defendant and her attorney did not know that he would testify? (3 marks)

(b) How would the defendant know the true extent of injuries alleged to have been sustained by the plaintiff? (10 marks)

(c) Should the doctor be regarded as an expert? (5 marks)

(d) Is the objection in relation to the doctor's testimony sound? (7 marks)

(Total marks = 25)

### **Question 2**

You are presiding over a murder trial at the High Court. The accused person pleads 'not guilty' to the charge. As part of their evidence, the prosecution produce a statement made by the accused person which they say is a confession. The accused person does not deny making the statement

For such a statement to be regarded as a confession, which requirements would you expect it to meet? (25 marks)

### Question 3

Mr Dlamini has entered into a written loan agreement with Standard Bank in terms of which the bank advances to him an amount of E2 000 000.00 and he is to pay back to the bank in monthly instalments of E30 000.00. The bank honours the agreement and Mr Dlamini pays for the first six months. He thereafter defaults for a continuous period of five months without offering the bank any explanation. The bank demands payment and Mr Dlamini does not respond. The bank sues him and it is then that he alleges that he is not in default, and that in fact, it is the bank which is in default. He states that, on top of the written loan agreement there is an oral agreement between him and the bank in terms of which the bank agreed to provide him with an overdraft facility on his account to the amount of E500 000.00 and that it is this overdraft which he would have been using to pay the monthly instalment. The bank denies that there is any such oral agreement stating that the written loan agreement constitutes the entire agreement between them as stated in the written loan agreement.

Discuss the legal position.

(25 marks)

### Question 4

Before the Manzini Magistrate's Court is a theft trial. The accused person is alleged to have used a fraudulent ATM card to make withdrawals from an account held by one of the reputable banks to the amount of E64 000.00. The accused person denies the charge. The only evidence against him is CCTV footage of him which was captured by cameras at the various ATM's where the accused person made the withdrawals.

(a) Does the prosecution have any material evidence?

(20 marks)

(b) Is it legally possible for the presiding magistrate to see the actual ATM's where the withdrawals are alleged to have been made?

(5 marks)

(Total marks = 25)

### Question 5

You receive instructions from a person who tells you that she is a client of an attorney that you know in Mbabane who has been working in partnership with four (4) other attorneys. She instructs that she had given instructions to the attorney to sell her farm which is valued at E4 000 000.00 some three (3) years ago. She further instructs that during this period it had been extremely difficult to have contact with the attorney as he had been hardly reachable. During the few times she had managed to talk to him, his responses regarding what was happening regarding the sale had been unclear. She then decided to do a search at the Deeds Registry office to find out if the property was still in the joint name of her late husband and herself and she found that ownership had changed. The property was in the name of an unknown person who had recently purchased it. The attorney concerned is no longer contactable, with recent information revealing that he resides in Mozambique. The client wants to sue the law firm, but the four (4) other attorneys say they are not legally liable.

(a) Will it be possible to sue the law firm? (10 marks)

(b) Is the client at liberty to reveal to you confidential communications made to the erstwhile attorney regarding the sale of the farm? (15 marks)

(Total marks = 25)

### Question 6

A person has died having made a will, but after his death the will cannot be found. His youngest son comes forward and states that his father had told him the contents of the will in detail and had even shown him the will.

(a) Should the recollection of the contents of the will by the son be relied on?

(10 marks)

(b) How may a dispute regarding the identity of a beneficiary under the will be resolved?

(15 marks)

(Total marks = 25)