

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW  
DIPLOMA IN LAW III - IDE**

**MAIN EXAMINATION PAPER, MAY 2018**

**TITLE OF PAPER : LAW OF EVIDENCE II**  
**COURSE CODE : IDE - 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**

In a civil trial before the High Court, you represent the defendant. At the commencement of the trial, the attorney for the plaintiff submits that the defendant has to be the first to present evidence. The presiding Judge calls on you to make submissions regarding the following:

- (a) Who has to present evidence first? (10 marks)
- (b) The circumstances which would permit the court to grant absolution from the instance in favour of the defendant. (15 marks)
- (Total marks = 25)

### **Question 2**

In a murder trial before the High Court, the main piece of evidence against the accused is a statement made by the deceased. Whilst in hospital, the deceased had made a statement that he was stabbed by the accused during a fight which the two (2) had due to a disagreement. The deceased thereafter died due to the stab wound inflicted by the accused.

Is such evidence admissible? (25 marks)

### **Question 3**

During a criminal trial at the Mbabane Magistrate's Court, the accused person is asked a question which requires him to reveal that there are other criminal charges he is likely to face other than the ones he is being prosecuted for?

Discuss whether or not the accused is obliged to answer such a question? (25 marks)

#### **Question 4**

Parties who have entered into a solemn engagement by deed are bound by the terms of the deed. Discuss the qualifications to which this rule is subject. (25 marks)

#### **Question 5**

In a criminal trial, you appear for the prosecution. As you prepare for trial you discover that one of your crucial witnesses was a tourist who had come to enjoy one of the cultural activities in the country and has returned to New Zealand, his country of origin. Upon contacting the witness by telephone, he indicates that he will be unable to come back to the country for the trial.

What would do to ensure that the evidence of this witness is placed before the court?  
(25 marks)

#### **Question 6**

Write notes on the following:

- (a) Witnesses called by a court. (10 marks)
  - (b) Presumptions applicable to marriage. (15 marks)
- (Total marks = 25)