

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

**SUPPLEMENTARY EXAMINATION, JULY 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**

Before the High Court a police officer is being prosecuted for having shot a suspect to death. The police officer is defending himself on the basis that he says he was acting in the course and scope of his duty when he shot the suspect.

(a) What kind of evidence should the police officer place before court to enable him to escape liability? (15 marks)

(b) What kind of burden must be discharged in order for the police officer to be put to his defence? (10 marks)

(Total marks = 25)

### **Question 2**

In a civil matter before the Manzini Magistrate's Court the question arises whether or not a particular letter was posted. The plaintiff alleges that the letter was posted. The defendant alleges that the specific letter was never posted. The plaintiff presents evidence of a journal which was prepared by the plaintiff's clerk, who is since deceased, in which he recorded all letters posted within a specific period. The journal indicates that the letter in question was posted. The defendant objects to the presentation of the evidence of the journal arguing that the clerk will have to come to court to present evidence of his recording.

You are the presiding magistrate. Would you rule in favour of the objection or not?

(25 marks)

### **Question 3**

A woman testifies for the plaintiff in legal proceedings in which her husband is the defendant. The attorney for the defendant objects to the testimony of the woman on the

basis that she is the wife of the defendant and she cannot legally be allowed to testify against him. You appear for the plaintiff in this matter.

The presiding judicial officer calls on you to make submissions regarding whether or not the woman's testimony is admissible. (25 marks)

#### **Question 4**

A client comes to you for legal advice. She informs you that about four (4) years ago she was involved in a motor vehicle accident in which she was badly injured. She engaged a law firm to pursue a claim against the Motor Vehicle Accident Fund (MVA Fund), which according to her knowledge, was successful. By written correspondence of a specific date she was informed that payment had been made to the law firm. She was even shown the bank statement of the MVA Fund showing the transfer of funds to the business bank account of the law firm. When she approached the law firm she found that the attorney she dealt with directly was no longer working at the law firm and was reported to have moved permanently to Mozambique. The attorney she found there denied liability even though he was one of the two (2) attorneys who were running the firm at the time instructions were given. That is the reason why the client is seeking advice from you.

Advise the client fully. (25 marks)

#### **Question 5**

An admission generally binds the person who has made it. However, there are instances where an admission will bind a person who has not made it on the basis that the maker of the admission had some authority to make the admission on behalf of the person who is bound.

Discuss those admissions where the maker of the admission is deemed to have express or implied authority from the person who is bound by the admission. (25 marks)