

**UNIVERSITY OF ESWATINI
DEPARTMENT OF LAW
DIPLOMA IN LAW**

MAIN EXAMINATION PAPER, DECEMBER 2018

TITLE OF PAPER : LAW OF EVIDENCE
COURSE CODE : DL039
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

In a civil trial you appear for the defendant. At the hearing of the matter the attorney for the plaintiff points out to you that your client's plea contains a formal admission. After taking further instructions from your client you realize that the formal admission was made in error and your client instructs that you withdraw it. Your client further instructs that she would like to present evidence of her good character and evidence of the bad character of the plaintiff so that the court views her in a favourable light in determining the merits of the matter.

(a) Will your client be allowed to withdraw the formal admission? (15 marks)

(b) Is the evidence which your client intends to present admissible?(10 marks)

(Total marks = 25)

Question 2

Before the Manzini Magistrate's Court is an indecent assault trial. The complainant testifies that soon after the ordeal she met her older sister and confided in her about what had happened to her. She tells the court the exact words she told her sister. The older sister testifies as the second witness for the prosecution. She tells the court where she was when she came across her younger sister who told her what the accused had done to her. She tells the court what her sister said to her. The attorney for the accused objects to the evidence of the second witness stating that it is inadmissible.

(a) What kind of evidence has the older sister presented? (5 marks)

(b) Is this evidence admissible or not? (20 marks)

(Total marks = 25)

Question 3

You are presiding over a trial in which the accused is being prosecuted for a contravention of the Road Traffic Act of 2007 in that he drove negligently due to the effects of alcohol. A dispute arises in relation to the identity of the motor vehicle which the accused was driving. To address the dispute, police present evidence of the engine number of the motor vehicle and further present evidence why they say the accused was drunk. A person who witnessed the arrest of the accused also testifies to the effect that the accused was drunk. The attorney for the accused objects to the evidence as a whole. He argues that the prosecution has failed to prove that his client was under the influence of alcohol and has also failed to prove the identity of the motor vehicle he is alleged to have been driving.

(a) Should police present evidence of what the engine number is for?(5 marks)

(b) Should the evidence seeking to prove that accused was drunk be disregarded?

(10 marks)

(c) What would be the best evidence to prove whether or not the accused was drunk?

(10 marks)

(Total marks = 25)

Question 4

Mr. Banks comes home with his 10-year old son and finds Mrs. Banks sitting in a compromising position with a certain Mr. One who is known to both Mr. and Mrs. Banks. Mr. Banks asks what is happening and before a response is given, assaults Mrs. Banks with an open hand on the face. Mrs. Banks moves away and cries. In the meantime, Mr. Banks goes for Mr. One with the intention of assaulting him. Whilst Mr. Banks is grabbing Mr. One by his clothes, Mrs. Banks picks up a vase and hits Mr. Banks with it on the head and as a result, Mr. Banks gets badly injured and falls down and becomes unconscious. This happens in the full view of Mr. and Mrs. Bank's 10-year old son who makes a video recording of the commotion as it unfolds using a mobile phone. Police arrive and Mrs.

Banks is arrested and charged with Attempted Murder. A few months later Mrs. Banks is put on trial. Mr. Banks, the 10-year old son and Mr. One are called as witnesses.

- (a) Is Mr. Banks a compellable witness? (10 marks)
 - (b) Is the 10-year old son a competent witness? (7 marks)
 - (c) Is evidence of the video recording admissible? (4 marks)
 - (d) Would photographic evidence of the scene be admissible? (4 marks)
- (Total marks = 25)

Question 5

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 6

Your client is on trial for theft. The eye witness for the prosecution is a person who committed the offence with your client who tells the court how he committed the offence with your client. He further tells the court that your client is troublesome in the area where the offence was committed because he has the tendency to break into people's houses whilst they are fast asleep at night.

The presiding magistrate calls upon you to address her on whether or not this testimony is admissible. (25 marks)