

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

**SUPPLEMENTARY EXAMINATION, JULY 2019**

**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 criminal trial in which the accused is charged with fraud, a witness tells the court that the accused forged some documents before committing the crime. He also tells the court that the accused has committed other similar kinds of fraud and is as such, a jailbird. Under cross-examination, the attorney for the accused puts it to the witness that his evidence is a recent fabrication and that in relation to the alleged forged documents he will require compliance with the best evidence rule.

- (a) Should the court accept the evidence of forged documents? (4 marks)
- (b) Is the evidence relating to the accused being referred to as a jailbird admissible? (14 marks)
- (c) What should the prosecutor do in relation to what the attorney has put to the witness? (7 marks)
- (Total marks = 25)

## Question 2

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 in one of the reputable banks to the amount of E64 000.00. The accused person denies the charge. The evidence against him includes the CCTV footage of him which was captured by cameras at the various ATM's where the accused person made the withdrawals and the ATM card which was found in his possession.

- (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 3

During a criminal trial in which the accused is charged with theft, a prosecution witness tells the court that he saw the accused commit the offence he is charged with. The defence attorney does not object to this testimony. During the defence stage, the accused person goes to the witness box and after having taken an oath, gives evidence of his good character.

(a) Is the evidence by the prosecution witness admissible? (15 marks)

(b) Is the evidence by the accused person admissible? (10 marks)

(Total marks = 25)

### Question 4

You appear for the prosecution in a murder trial at the High Court. At the commencement of the trial the accused person pleads 'not guilty' to the charge. The attorney for the accused person stands up and tells the court that they do not dispute the identity of the deceased as the person cited in the indictment. He also tells the court that they do not deny that the deceased died from a gun shot wound to the chest as alleged in the post-mortem report. An eye witness for the prosecution goes to the witness box, introduces himself and takes the oath. After having done so he relates to the court how he heard two (2) people confronting each other. He got closer and then saw the accused person and the deceased fighting. Thereafter he saw he accused person pull out a gun and fire at the deceased in the chest area. The deceased fell down and police were called. He further tells the court that he identified the accused to the police prior to his arrest. The attorney for the accused person objects to the evidence of this witness. He tells the court such evidence is irrelevant and inadmissible. In respect of the post-mortem report the attorney states that the rules relating to the admissibility of documentary evidence must be complied with.

(a) Address the court on whether such evidence is irrelevant and inadmissible or not.

(10 marks)

(b) How would you comply with the requirements relating to documentary evidence?

(15 marks)

(Total marks =25)

### **Question 5**

Discuss exceptions to the similar fact rule.

(25 marks)