

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

MAIN EXAMINATION PAPER, MAY 2019

TITLE OF PAPER : LAW OF EVIDENCE II
COURSE CODE : IDE - DL040
TIME ALLOWED : THREE (3) HOURS
TOTAL MARKS : 100
INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS

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GRANTED BY THE INVIGILATOR TO DO SO.**

Question 1

A person has died leaving a will. In the will he has stated that of the two (2) houses which his family occupies, the one closest to the company he works for belongs to the company, and for that reason, it does not form part of his estate. The wife of the deceased refuses to hand over the keys of that house to the company upon the death of the deceased.

You represent the company. Would you be in a position to use the man's will and on what basis would you use or not use the will?

(25 marks)

Question 2

Your client has been charged with murder. He appears before the High Court for trial and duly indicates that he intends pleading 'not guilty' to the charge. The prosecution indicates to you that part of the evidence they have against your client is a statement made by your client to a magistrate. They say it is a confession and they will use it against your client. Your client instructs you that the statement was made against his will.

During the trial, the Judge indicates that he is prepared to admit the statement but before doing so, gives you the opportunity to address him on why the statement should not be admitted. Address the court fully.

(25 marks)

Question 3

(a) Is a spontaneous statement admissible?

(20 marks)

(b) Can a statement of intention be used against an accused?

(5 marks)

(Total marks = 25)

Question 4

Your client, a known criminal comes to you for legal advice. He informs you that he has been evading paying customs duties ever since he started operating his business. He informs you that it seems things will change soon now that the Eswatini Revenue Authority is in charge of collecting revenue for the Government. He informs you that he wants to continue enjoying this 'benefit.' He further instructs that should officers from the Authority ask you anything about his business dealings, you must claim professional privilege.

Discuss the nature of professional privilege and whether or not, in the given circumstances, a court would uphold a claim of such privilege. (25 marks)

Question 5

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 6

An admission binds the person who has made it. However, there are admissions which bind another person other than the maker of the statement on the basis that the latter had express or implied authority. Discuss such admissions. (25 marks)