



**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
BACHELOR OF LAWS/DIPLOMA IN LAW  
FINAL EXAMINATION PAPER NOVEMBER 2019**

**TITLE OF PAPER : LAW OF EVIDENCE**  
**COURSE CODE : IDE – LAW301**  
**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**

You represent a person who is suing for defamation on the basis that the defendant published defamatory material against him on Twitter. At the hearing of the matter, the Judge orders that the matter should go to trial.

Discuss how you would present your client's case including the kind of evidence you will have to present to ensure that you are successful in carrying out the client's instructions? (25 marks)

### **Question 2**

You appear for the prosecution in a trial in which the accused is charged with rape in violation of the Sexual Offences and Domestic Violence Act of 2018. The complainant is thirteen (13) years old. You discover that the complainant is scared to testify in court. You convey this dilemma to the defence. The view of the defence is that this means that the witness should either be compelled to testify or declared incompetent to testify.

Address the court on a way forward? (25 marks)

### **Question 3**

You represent an accused person charged with culpable homicide. After having taken instructions, you obtained evidence that the deceased person had made a statement, whilst in hospital, before he died in which he stated the name of the person he had fight with resulting in him being stabbed which stabbing eventually resulting in his death. It turns out that the person referred to in the statement is not the accused.

Would you be in a position to use such evidence and on what basis would you use or not use such evidence? (25 marks)

#### **Question 4**

In a civil trial, the plaintiff is relying on a spontaneous statement to prove her case. The defendant opposes the admissibility of the spontaneous statement. The presiding judicial officer indicates that he is inclined to exclude the statement. Before doing so, he calls on you to address the court on why the statement should be admitted and whether there is any difference between such statement and a statement that accompanies and explains a relevant act.

(25 marks)

#### **Question 5**

You appear for the prosecution in a matter in which a person has been charged with the assault of his wife. The matter goes to trial. The man pleads 'not guilty' to the charge. You call the complainant, who is the wife of the accused, to testify. The defence object to the woman testifying on the basis that, as the wife of the accused, she is incompetent to testify against him. The presiding magistrate wants the matter to be speedily finalized.

You are called upon to make submissions in response to the objection by the defence and to enlighten the court on the general position regarding the competence of witnesses.

(25

marks)

#### **Question 6**

A person charged with fraud appears in court for trial. During the defence stage, he tells the court that he is not guilty of the crime because he earns an honest living. The prosecution indicates that they will lead evidence of the bad character of the accused.

Discuss the legal position.

(25 marks)