



**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
DIPLOMA IN LAW (NON-CREDIT SYSTEM)  
FINAL EXAMINATION PAPER NOVEMBER 2021**

**TITLE OF PAPER : LAW OF EVIDENCE II**  
**COURSE CODE : IDE – DL040**  
**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**

During a murder trial at the High Court, the prosecution produced a statement which is alleged to have been made by the accused person to a magistrate detailing how he committed the offence. The defence objects to the statement and denies that it was ever made.

As the presiding Judge in this matter how would you proceed and would such statement be admissible? **(25 marks)**

### **Question 2**

A person comes to you for legal advice. In the course of taking instructions you discover that the person wants you to take part in the commission of a crime. Having realized this you then decide that you will not give this person any advice and you will not represent him in any legal proceedings. Police come to your office in the course of investigating this individual and request you to tell them what the person had come to tell you.

What would you do in these circumstances and on what basis?

**(25 marks)**

### **Question 3**

Your client entered into a written contract with the defendant. The contract has a clear provision that it constitutes the entire agreement between your client and the defendant. Your client is suing the defendant for breach of contract. The defendant alleges that he is not in breach and that in fact it is your client who is in breach of an oral agreement which was entered into after the written agreement and that both the written and oral agreement constitute the real agreement between the parties.

The presiding judicial officer calls on you to address her on the defence that the defendant is raising. **(25 marks)**

#### **Question 4**

In a criminal trial in which you appear for the prosecution the accused person tells the court that he is a good person in his community and never goes around stealing people's things. When asked if he has ever been charged with theft before, he tells the court that he is claiming the privilege against self-incrimination. He also tells the court that he denies that he was ever present at the scene of crime. His attorney had put it to the prosecution witnesses that his client was present at the scene of crime but never committed the crime.

How would you address the court? **(25 marks)**

#### **Question 5**

You represent the plaintiff in a case in which the defendant had presented himself to the plaintiff as a representative of a company based in South Africa which produces and sells solar panels. He had further stated that upon placement of an order with him and payment of a twenty percent deposit, delivery is made within three (3) weeks. The plaintiff had placed a substantial order and paid the required deposit. However, when it was time for delivery, the defendant had told the plaintiff that he in fact has no connections with that company.

Address the court on the defence raised by the defendant **(25 marks)**

### **Question 6**

An accused person appears in court and pleads *autrefois acquit*. For this plea to be successful what would he have to prove and is there any difference between this plea and that of *res judicata* in civil proceedings?

**(25 marks)**