

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**L384: LAW OF EVIDENCE**

**MAY, 2017**

**Marks: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR** questions.
  2. All questions carry equal marks.
  3. Answer clearly and refer to relevant authorities wherever possible.
  4. Allocate 45 minutes to each question.
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### Question 1

“Similar fact evidence will be admissible where it is adduced for relevant purposes other than showing that the facts in issue were the result of a disposition, tendency or recurrent pattern and exceptionally where it does have that purpose.”

Per LLB dissertation.

Discuss the above statement.

**[25 Marks]**

### Question 2

A gang of thieves including one Mohale among them, robbed Standard Bank of Maloti 50,000. They subsequently forced one, Peter, on pain of death, to keep the money for them. Sello and Pitso, both bank tellers, were seriously injured during the robbery. Sello told the first police officer to arrive at the scene, Inspector Tsolo, “I am dead, I am dead, Mohale has killed me. Get me a doctor, please hurry.”

Twenty minutes after the robbery an ambulance arrived and as Sello and Pitso were carried to the ambulance Pitso told Inspector Tsolo, “see what Mohale did to me”, showing Tsolo the knife wounds in his stomach. Pitso also dictated to Inspector Tsolo the registration number of the car used by the thieves before he fainted. Sello died from his wounds on arrival at the hospital but Pitso is still in a coma.

At the trial of Mohale and Peter for the robbery:

- (a) May Peter recount the conversation he had with the thieves? **5 marks**
- (b) May Inspector Tsolo recount the conversation he had with Sello? **5 marks**
- (c) May Inspector Tsolo recount the conversation he had with Pitso in respect of his injuries? **5 marks**
- (d) May Inspector Tsolo tender the piece of paper on which he recorded the registration number of the thieves’ car? **5 marks**
- (e) May the fact that an unidentified person standing near the bank was heard by Inspector Tsolo to say, “hello Peter what are you doing here at this time of the day?” be tendered by Tsolo as evidence that Peter was near the bank? **5 marks**

**[25 Marks]**



### Question 3

In three separate High Court cases the only evidence which links the accused with the commission of the crime is as stated below: Discuss in each case whether the evidence is admissible:

(a) On a charge of robbery, evidence by a police officer that while he was under police interrogation lasting two hours and having been cautioned, the accused replied, after initially denying everything, "okay. I admit I robbed Palesa. You will find her purse under my pillow in my bedroom." The police find Palesa's purse under the accused's pillow.

**10 marks**

(b) On a charge of arson, evidence by a police officer of a statement made to him by the accused after being cautioned and asked whether he had burnt down the building to the effect that, "I am very sorry. The devil made me do it."

**10 marks**

(c) On a charge of rape of Lucy, evidence by the accused's cousin that the accused had boasted to him (cousin) that he (the accused) took Lucy's virginity by force.

**5 marks**

**[25 Marks]**

### Question 4

(a) Using decided cases discuss the conditions for the admissibility in evidence of statements made in furtherance of a common purpose.

**10 marks**

(b) Ramaema, the purchasing officer in the Ministry of Home Affairs was instructed by his Principal Secretary (PS) to order a DNA analysis machine for the National Police Laboratory. Ramaema informed his friend and businessman, Likoti that the budget for the machine was M5 million but that if he obtained the machine for M7 million they would share the difference.

Likoti approached Pretorius, a South African dealer in DNA machines, and asked him to supply the Lesotho government with the machine at M7 million. But the latter refused to supply the machine at the inflated price despite Likoti's attempts to persuade him. Instead, Pretorius informed the police. When confronted with these allegations by the PS Ramaema denied everything but Likoti admitted the whole deal to the PS.

Ramaema is charged with bribery and pleads not guilty but he is convicted on the strength of the testimony of Pretorius and that of the PS which was wholly based on what Likoti told him. Ramaema appeals the decision.

How would you decide?

**15 marks**

**[25 Marks]**

### **Question 5**

(a) An amendment to the Lesotho Road Traffic Act provides as follows:

“No person shall drive a motor-vehicle on a road if he is using a hand-held cell-phone...”

The amendment allows for the following defence:

“A person does not contravene this regulation if, at the time of the alleged contravention- (a) he is using the phone to call the police, fire, ambulance or other emergency service;

(b) he is acting in response to a genuine emergency; and

(c) it is unsafe or impractical for him to cease driving in order to make the call.

Sello is prosecuted for contravening this regulation but claims that he is entitled to the defence provided under the section.

Discuss the location of the burden of proof and how it may be discharged.

**10 marks**

(b) Thabo brings a civil suit against the executors of Likoti's will claiming payment of M50,000 in terms of the will. He claims that the will made by Likoti a week before he died and which has recently come to light names him as the beneficiary in the



sum of M50,000. The executors have refused to pay the said amount of the claim and in their plea, state that the will was forged by Thabo.

- (i) Who bears the legal burden of proof? **5 marks**
  - (ii) Who bears the evidentiary burden of proof, if any? **5 marks**
  - (iii) What is the standard of proof? **5 marks**
- [25 Marks]**

### **Question 6**

Pule, his wife, Palesa and Tumi are jointly charged with raping Lerato. Lerato testifies that she was set upon inside her house and raped by Pule and Tumi while Palesa held her down. All the three accused have previous convictions for sexual assault. They all plead not guilty.

Palesa testifies on her own behalf and says that although she initially agreed to assist her husband, Pule she later changed her mind and did not participate in the alleged rape. She makes no mention of Tumi.

- (a) Is Palesa's testimony admissible against her husband, Pule? **5 marks**
- (b) How should the court treat Palesa's testimony? **5 marks**
- (c) May Tumi call Palesa to testify that he (Tumi) was not involved in the rape? **5 marks**
- (d) How should the court treat Lerato's testimony? **5 marks**
- (e) May the crown tender evidence of Palesa's previous conviction for sexual assault? **5 marks**

**[25 Marks]**

**END**