

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LLB FINAL EXAMINATIONS**

**L384- LAW OF EVIDENCE**

**MAY 2018**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

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

“It is a sacred and inviolable principle of evidence law that no man shall be bound to hang himself by the words of his own mouth.” Per Wigmore in Treatise of Evidence, page 679.

Discuss the application of the above principle in relation to:

- (a) A person called as a witness for the plaintiff in civil proceedings **5 Marks**
  - (b) An accused person in criminal proceedings **5 Marks**
  - (c) A wife of the plaintiff called as a witness by the defendant in civil proceedings **5 Marks**
  - (d) A director of a company called as a witness before the Master of the High Court when his company is being wound up under section 205 of the Companies Act **5 Marks**
  - (e) A witness called as a *socius criminis*. **5 Marks**
- [25 MARKS]**

### Question 2

Mrs Thabo is suing the Minister of Health and the Attorney General for the death of her husband which was negligently caused at Tsepong Hospital. The death occurred during an operation in which a new drug known as pesticin had been administered by Dr. Louw, one of the hospital's doctors to Mr. Thabo. Consider the issues in the law of evidence relating to the following items of evidence:

- (a) The evidence of Mr. Matela, the hospital administrator who is not a doctor but who will produce a post mortem report by Dr. Pretorius, who is away on holiday, to the effect that Thabo died of heart failure. **5 Marks**
- (b) A research paper by Dr. Rabie, in which he warns of the danger of administering pesticin where a patient's heart rate is above a particular level. The paper is published in the prestigious journal of the Lesotho Medical Society. Dr Rabie is unavailable to give evidence in the case. **5 Marks**



(c) A report commissioned by the Ministry of Health on the effects of administering pesticin to patients during an operation. The report recommends against administering pesticin where a patient's heart rate is above a particular level. The Minister of Health has certified that it is in the public interest to withhold disclosure of the contents of the report.

**5 Marks**

(d) The record of a disciplinary inquiry against Dr. Louw in which the hospital's board had found him guilty of negligence. The report had been forwarded to the hospital's lawyers in the event that the hospital was sued, and the lawyers have refused to hand over the document.

**5 Marks**

(e) The evidence of Nurse Teboho that Dr Louw had said just after he had administered a dose of pesticin, "May be I should have checked his heart rate after all." Dr Louw is now in Australia, having been sacked by Tsepong Hospital.

**5 Marks**

**[25 MARKS]**

### **Question 3**

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

**[25 MARKS]**

### **Question 4**

Sello is on trial for the murder of Molapo. According to the postmortem report, Molapo died from brain haemorrhage as a result of a skull fracture sustained from the use of a blunt object applied with considerable force.

Before he died, Molapo told chief Maama that he had been hit with a knobkerrie by Sello who suspected him of having a love affair with Sello's mother. At the time he made the statement Molapo had been taken on a makeshift stretcher to the chief's compound. He was vomiting and bleeding profusely from his head wound

He then added, "Sello has finished me. Somebody give me poison." He was taken to hospital and died a week later.

A manhunt was organized for Sello, who, realizing that the police were looking for him, handed himself in to the Roma charge office. He told Inspector Ramaema who arrested him that, "I beat Molapo to death because he has been having an affair with my mother behind my father's back". This statement was not reduced in writing before a magistrate. He was locked up in the police cells. The next day he was transferred to Maseru but on the way he took the police to a *donga* in Makhalanyane and showed them a knobkerrie which had dried blood and strands of human hair on it.

Discuss the admissibility of:

- (a) Molapo's statement to Chief Maama **6 Marks**
- (b) Sello's statement to Inspector Ramaema **12 Marks**
- (c) The bloodstained knobkerrie. **7 Marks**

**[25 MARKS]**

### **Question 5**

(a) Section 267 of the Criminal Procedure and Evidence Act provides that:

- (1) Upon the trial of a person charged with theft while employed by the government... of money which belongs to the government an entry in any book of account kept by the accused, purporting to be an entry of the receipt of any money shall be evidence that the money so purporting to have been received was so received by him.
- (2) It shall not be necessary, on the trial of any person charged with an offence referred to in subsection (1), to prove the theft by the accused of any specific sum of money if on the examination of the books of account or entries kept by him, there is proof of a general deficiency...

Molapo was the cashier at the traffic office whose duties included daily receipt and banking of money paid by the public for road licenses. A surprise internal audit revealed a short fall in Molapo's books of account. He has now been charged with theft.

Discuss the location of the legal burden of proof.

**10 Marks**

- (b) Likoti is suing National Insurance Corporation (NIC) on a policy of insurance in respect of Likoti's shop premises which had caught fire and which was insured by



NIC against damage by fire. NIC's defence is that Likoti committed the crime of arson (ie set fire to his own shop) and is therefore not entitled to claim the insurance money.

(i) Which party bears the legal burden of proof in this case? Give reasons. **5 Marks**

(ii) Which party bears the evidentiary burden of proof? Give reasons **5 Marks**

(iii) What is the standard of proof in this case? Give reasons. **5 Marks**

**[25 MARKS]**

### **Question 6**

Sello and Teboho are husband and wife married in community of property. They have a son aged 20 years. They were living happily together until Sello's mother came to live with them. Since then there have been quarrels between them with Teboho accusing Sello of being Mama's boy and of siding with his mother against her on every issue. Relations have become so bad that Teboho moved out of the matrimonial home.

Recently matters came to a head when Sello who had gone shopping at Shoprite with his mother and son met Teboho by chance on Kingsway. A quarrel took place as a result of which the crown alleges that Teboho punched Sello on the head, slapped his mother in the face, smashed the windscreen of his car and then kicked their son on the shin when he told her not to make a scene on the street. Later that evening a still angry Teboho is alleged to have telephoned Sello and said in reference to his mother, "I wish I had killed the old bag."

(a) Teboho has been charged and at her trial the crown wishes to lead evidence of Sello against his wife, Teboho. Discuss Sello's position as crown witness with regard to the:

(i) assault on him **[4 Marks]**

(ii) assault on his mother **[4 Marks]**

(iii) assault on his son **[4 Marks]**

(iv) malicious damage to his car **[4 Marks]**

(v) Teboho's telephone call **[4 Marks]**

(b) Would your answer be different if Sello and Teboho had not been married at the time of the incident but had reconciled and got married a week before the trial?

**[5 Marks]**

**[25 MARKS]**

**END**