

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**PGD LABOUR LAW (CONCILIATION AND ARBITRATION)**

**FINAL EXAMINATIONS**

**LPD 104 – THE LAW OF EVIDENCE**

**MAY 2018**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. answer any **FOUR (4)** questions.
2. Write legibly and neatly; should you have to make any correction, simply ~~cancel through with a single line.~~
3. Legal authorities wherever used must be underlined.

**QUESTION 1**

Write short notes on the following:

- (a) Real evidence **5 Marks**
- (b) Relevance of evidence **5 Marks**
- (c) Admissibility of evidence **5 Marks**
- (d) Judicial notice **5 Marks**
- (e) Circumstantial evidence **5 Marks**

**[25 MARKS]**

**QUESTION 2**

- (a) Examine the incidence of burden of proof.  
**7 Marks**
- (b) Distinguish between the civil and criminal standard of proof.  
**8 Marks**
- (c) Distinguish between the rebuttable and irrebutable presumptions of law.

**10 Marks**

**[25 MARKS]**

**QUESTION 3**

Critically discuss the rule in *Hollington v Hewthorn* [1943] 2 All ER 35 and examine whether that rule applies in arbitration and disciplinary proceedings.

**[25 MARKS]**

**QUESTION 4**

Atang is employed as a driver by Fonocom Electronics. While on duty and driving to Mafeteng to deliver cell phones and other devices, this merchandise disappeared (got lost or was stolen).

Atang was arrested by the police and tried at Maseru Magistrate Court which found him guilty and sentenced him to pay a M1,500 fine. Thereafter Fonocom Electronics proceeded disciplinarily against Atang for the theft of cell phones and has appointed you as the chairman of the disciplinary hearing committee. Fonocom Electronics seeks to present evidence of a number of witnesses against Atang.

(a) Determine the admissibility of Bonang's evidence (the Fonocom Electronics' Human Resource Manager) who testifies that Atang is generally a thief who lives on products committed to his care and protection.

**7 Marks**

(b) Determine the admissibility of Bonang's evidence consisting of documents from Atang's personal file to indicate that Atang had previously, on three (3) similar occasions as the present occasion, been found guilty of stealing cell phones he, Atang, was delivering to several Fonocom Eletronics' shops in Mafeteng.

**7 Marks**



(c) Determine the admissibility of Helen's evidence that upon Atang's arrival at home, Atang told her that he had sold the cell phones to some other persons through "a middleman". Helen is Atang's wife.

**7 Marks**

(d) Determine the competence of Itumeleng, Atang's daughter who is five (5) years, to give evidence that she (Itumeleng) saw Atang giving Helen some money and saying to her (Helen), "I sold the merchandise through a middleman."

**4 Marks**

**[25 MARKS]**

### **QUESTION 5**

Assuming the facts as they appear in Question 4 above, determine the admissibility of the following witnesses' evidence:

(a) Christina, Atang's now estranged girlfriend, who testifies that she heard Atang saying he, Atang, had sold five (5) cell phones belonging to Fonocom Electronics to several "customers" in Mafeteng with the help of "a middleman".

**6 Marks**

(b) David who testifies that he, David, was told by one Ermile, that Atang sold the five (5) cell phones belonging to Fonocom Electronics to several "customers" in Mafeteng with the help of "a middleman". Ermile is not called as a witness.

**6 Marks**

(c) Frank, Fonocom Electronics' Lost Items Recovery Technologist, who testifies that according to her data and technical analysis, Atang stole the five (5)

cell phones from the vehicle he, Atang was driving, and handed them to the person unknown to him (Frank).

**6 Marks**

(d) Godfrey, Atang's lawyer and friend, who testifies that Atang, on the day of the theft of the cell phones, came to consult him at his (Godfrey's) office and there he (Atang) confessed that he took the said cell phones and sold them through "a middleman".

**7 Marks**

**[25 MARKS]**

#### **QUESTION 6**

Critically evaluate the view that polygraph (the machine that detects whether an employee is guilty or not of some misconduct) is the modern-day trial by ordeal.

**[25 MARKS]**