

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LLB FINAL EXAMINATIONS

L384- LAW OF EVIDENCE

MAY 2019

MARKS: 100

TIME: 3 HOURS

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

1

Thabo is charged with the rape of Celina, a virgin. The Crown's case is that Thabo met Celina (whom he knew) as she walked home from school, pulled her behind a row of houses, raped her at knife point and then stabbed her fatally. Thabo's defence is that he has been wrongly identified.

Consider the admissibility of the following items of evidence:

(a) The evidence of Palesa, Celina's mother, that from her nearby house she heard Celina shout, 'Thabo, no!'

5 Marks

(b) Celina's shouting brought her sister, Teboho, running from the house. Celina said to Teboho, 'It was Thabo. I am not sure I will make it. Please call Father Gilbeault'

5 Marks

(c) The evidence of Likoti, a friend of Sello who is a brother to Thabo that Sello told him (Likoti) that Sello and Thabo arranged to rape Celina on her way back from school but Sello changed his mind and ran away after he saw that Thabo was carrying a knife.

5 Marks

(d) The evidence of Pheko, a cousin of Thabo, that Thabo had boasted to him (Pheko) that he had single handedly taken Celina's virginity after his brother, Sello had run away.

5 Marks

(e) The evidence of police officer, Tumi, who searched Thabo's house and found many pornographic magazines with the name 'Celina' written across many of the naked female photographs in Thabo's handwriting.

5 Marks

[25 MARKS]

Question 2

(a) Makara is an accountant employed with NUL bursary. The NUL alleges that he stole university funds and brings proceedings against Makara for his dismissal before the Academic Staff Appointments disciplinary committee. Makara denies the

alleged theft whereupon NUL seeks to introduce before the committee evidence of a judgement of the Maseru Magistrate's Court of December, 2018 where Makara was convicted of the said theft from NUL.

(i) Is the judgement admissible?

5 Marks

(ii) Assume that Makara is dismissed by the NUL Council after this hearing and challenges his dismissal before the Directorate of Dispute Prevention and Resolution (DDPR). May NUL tender evidence of the Maseru Magistrate's Court's judgement of December, 2018 before the DDPR?

5 Marks

(iii) Assume that the evidence is admissible, what weight if any, will the court attach to the judgement?

5 Marks

(b) Tumi is charged before the Mafeteng Magistrate's Court with receiving stolen goods knowing them to have been stolen. Tumi admits that he received the goods from Mohapi but argues that he is not guilty of the charge because:

(i) The goods were not stolen; and

(ii) That even if the goods were stolen, he did not know at the time that he received them from Mohapi, that they were stolen.

Tumi wishes to testify that at the time he received the goods Mohapi told him that the goods were not stolen.

Is Tumi's testimony admissible?

10 Marks

[25 MARKS]

Question 3

In three separate High Court cases the evidence which links the accused with the commission of a crime is as follows. 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 finally said, "Okay, I admit I robbed her. You will find her purse under my pillow in my bedroom." This statement is not reduced in writing before a magistrate but 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 sorry. The devil made me do it." This statement was not reduced in writing before a magistrate.

10 Marks

(c) On a charge of murder, the accused, while under interrogation was told by the police that if he offered to pay compensation (*ho tsosa hlooho*) to the widow of the deceased, he might avoid custodial sentence, whereupon he said, "Yes, I murdered the deceased." The accused was not taken to a magistrate to have the statement reduced in writing. Instead the police took him to the widow to whom he repeated the statement. The widow now repeats the statement in court.

5 Marks
[25 MARKS]

Question 4

"At common law the trial of an accused charged with rape turns the case into a trial of the victim instead of the accused. Fortunately, the Sexual Offences Act, 2003 has restored the balance between the victim and the accused in a rape trial."

Per LLB Dissertation 2011/12

Discuss.

[25 MARKS]

Question 5

(a) Jennifer and Mary were out on a night together. After a few drinks, they became involved in an argument with each other, in the course of which Jennifer hit Mary on the head with a heavy glass ash tray in the bar after Mary had thrown a beer glass at her and missed.

Mary required hospital treatment for a fractured skull and was unable to return to work for months. Jennifer claims that Mary would have made a complete recovery very much sooner than she did if she had not deliberately ignored medical advice.

(i) Assume that the Crown prosecutes Jennifer for assault, discuss the location of the legal burden of proof.

5 Marks

(ii) Assume that Mary sues Jennifer for damages for assault, discuss the location of the legal burden of proof.

5 Marks

(b) Matekane Contractors undertook to refurbish for NUL its senior staff club in terms of a contract signed by both parties. Matekane has now filed a civil claim against NUL for the amount due after completion of the refurbishment. Matekane is in possession of certificate of satisfactory completion signed by the Architect appointed by both parties to over-see the project. NUL refuses to pay claiming that the work is shoddy and that the Architect's certificate was forged by Matekane.

(i) Who bears the legal burden? Give reasons

5 Marks

(ii) Who bears the evidentiary burden? Give reasons

5 Marks

(iii) What is the standard of proof?

5 Marks

[25 MARKS]

Question 6

Mohale is married to Lineo under civil rights. He became suspicious that his wife was having an affair with his brother Kolisang after he saw love sms messages left on his wife's cell-phone by Kolisang. The other day he told her that he would kill them both if he finds out that they are having an affair. Then last week he returned home from work unexpectedly and found Lineo and Kolisang in bed together. He shot and wounded both of them. Mohale was arrested and is now on trial charged

with two counts of (a) attempted murder of his wife, Lineo and (b) attempted murder of his brother, Kolisang.

(a) Lineo is ashamed of her behaviour and is reluctant to testify.

(i) Would she be compelled to testify at the trial of Mohale, her husband?

5 Marks

(ii) If she does give evidence for the Crown may the Crown counsel ask Lineo whether Mohale told her that he would kill them both if he caught her having sexual intercourse with Kolisang?

5 Marks

(iii) If she does give evidence for the crown can the defence counsel cross-examine Lineo as to whether she ever had sexual intercourse with Kolisang?

5 Marks

(b) Assume that Kolisang sues Mohale claiming damages for injuries sustained in the incident:

(i) Can Kolisang compel Lineo to give evidence on his behalf?

5 Marks

(ii) If she does give evidence in the civil suit can Kolisang ask Lineo whether Mohale told her that he would kill them both if he caught her having sexual intercourse with Kolisang?

5 Marks

[25 MARKS]

END