

**NATIONAL UNIVERSITY OF LESOTHO****FACULTY OF LAW****LL. B EXAMINATIONS****L3307: LAW OF EVIDENCE****January, 2024****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
4. Allocate 45 minutes to each question

## QUESTION 1

Lord Herschell's *dictum* in *Makin v Attorney-General for New South Wales*:

“It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.”

Based on the *dictum* above discuss exceptions to evidence of similar facts and evidence of character.

**[25 MARKS]**

## QUESTION 2

A suspect is arrested by two police officers for the murder of Evelyn. Upon his arrest he tells the police officers the following:

“I am the main man on these streets. I am the one who shot her. I shot her six times. I emptied the gun on her. She was full of holes.”

The prosecution seeks to produce the above statement as evidence.

- a. Discuss the determining factors for an informal admission before a police officer to be admissible as evidence in court.

**10 Marks**

- b. Based on the above statements by the accused, can they be used as evidence in court for murder of Evelyn?

**15 Marks**

**[25 MARKS]**

### **QUESTION 3**

Tefo is arrested and charged with the sexual assault of his lover Lerato. Lerato testifies that she has never been with a man before and she was still a virgin before Tefo sexually assaulted her. The defense asks Lerato about her ex-lover and whether it was true that she withdrew a rape charge against him in 2017. Tefo testifies that he is a good man, a man of morals and a Christian. He further testifies that he has never in his life touched any woman inappropriately. He testifies that Lerato was not a virgin, she has been with other man before him. He testifies further that they had consensual intercourse more than once.

Discuss the admissibility of the following:

- a) The prosecution's evidence of a judgment of the Maseru Magistrate Court against Tefo where he was convicted of rape.

**5 Marks**

- b) The defense's introduction of Lerato's previous sexual history as evidence.

**5 Marks**

- c) The evidence of Teboho, a church friend of Tefo who testified that Tefo is a man of God.

**5 Marks**

- d) The evidence of Palesa, Lerato's neighbor, that from her nearby house she heard Palesa shout, "Tefo NO!"

**5 Marks**

- e) The evidence of police officer, Thabiso, who searched Tefo's house and found many pornographic magazines with the name of Lerato written across many of the naked female photographs.

**5 Marks****[25 MARKS]****QUESTION 4**

It is a sacred and inviolable principle of the law of evidence that no man shall be bound to hang himself by the words of his own mouth.

Discuss the following and apply the above principle:

- (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 liquidated in terms of the Companies Act.

**5 Marks**

(e) A witness called as an accomplice to the accused.

**5 Marks**

**[25 MARKS]**

## **QUESTION 5**

Explain

a) Marital privilege

**5 Marks**

b) Character evidence

**5 Marks**

c) Legal Professional Privilege

**5 Marks**

d) Expert Opinion

**5 Marks**

e) The rule in *Hollington v Hewthorn & Co Ltd* 1943 2 All ER 35.

**5 Marks**

**[25 MARKS]**

## **QUESTION 6**

Hearsay is a rule in the law of evidence that guards against relying on evidence and statements made by someone who is not before court to testify and be cross-examined on the statements. However, there are exceptions to this general rule.

Discuss four exceptions to the hearsay rule.

**[25 MARKS]**