



## **UNIVERSITY OF NAMIBIA**

<b>FACULTY</b>	FACULTY OF LAW		
<b>DEPARTMENT</b>	Private and Procedural Law		
<b>SUBJECT</b>	Law of Evidence		
<b>SUBJECT CODE</b>	LPEV 3771		
<b>DATE</b>	June/July 2020		
<b>DURATION</b>	3 Hours	<b>MARKS</b>	100

### **Winter School Examination**

**Examiner:** Mr. Eugene Lizazi Libebe

**Moderator:**

This question paper consists of 3 pages, including the cover page.

#### ***Instructions:***

1. Answer ALL questions.
2. Kindly number the answers appropriately on the front of the answer book in the sequence you have answered them.
3. Please write legibly, to the point and cite authorities where appropriate.
4. Underline all authorities.

**QUESTION 1****[25 marks]**

Unconstitutionally obtained evidence can be admissible or inadmissible depending on the discretion of the courts in Namibia. Discuss the circumstances in which such evidence may be admissible and inadmissible. Refer to case law, statutes and the position in other jurisdictions.

**QUESTION 2****[25 marks]**

2.1 Mr. Y and Mrs. Z are charged with defrauding the social grant scheme set up to benefit indigent children in that they pretended to be the parents of a fictitious dependent in need of the social grant scheme. They are charged as co-accused in the matter. Answer the following questions:

(a) The state prosecutor wants to call Mrs. Z as a prosecution witness. What must the prosecutor do in order to call Mrs. Z? [5 marks]

(b) Assume that the state prosecutor is able to call Mrs. Z as a prosecution witness. What should the approach for the court be with regard to the evidential value of Mrs. Z's testimony? Motivate your answer with case law? [5 marks]

2.2 Explain the difference between an admission and confession; and discuss the requirements for the admissibility of a confession in terms of section 217 of the Criminal Procedure Act 51 of 1977. [15 marks]

**QUESTION 3****[25 marks]**

The evidential orthodox rule in regard to admissibility of '*Previous Consistent Statements*' is that such statements are excluded in that they are irrelevant, superfluous and in most cases, they lack probative value. This rule is, however,

subject to some exceptions. **Briefly discuss these exceptions with reference to both common and Namibian statute law.**

**QUESTION 4**

**[25 marks]**

Assuming that you are working as a 'public prosecutor' for the office of the Prosecutor-General of Namibia at the District Magistrate Court in Mariental, and you are requested to lead the prosecution in the following matter. Accused X is being charged with and prosecuted for common assault and domestic violence. There is ample evidence to show that accused X is of a violent nature; that he is always fighting with other patrons whenever he is drinking in Shabeens. In addition, you are in possession of a court's record showing that accused X was previously convicted of the same misconducts or offences as in the present indictments.

**Will you be allowed to adduce the above evidence as it relates to X's violent conduct and his previous convictions? Justify your answer. Refer to the relevant statute and case law.**

**.....END.....**