



***"Investing in Africa's Future"***

**SCHOOL OF LAW**

**NLLB 202 LAW OF EVIDENCE**

**END OF FIRST SEMESTER EXAMINATIONS**

**AUGUST/DECEMBER 2024**

**LECTURER : MR. D. TANDIRI**

**DURATION : 3HRS**

**GENERAL INSTRUCTIONS TO CANDIDATES**

- 1.** Answer FOUR questions, Question 1 in Section A and any THREE (3) from Section B.
- 2.** Start each answer on a new page. Note that if a question has sub questions such as a, b or c, it should be treated as one question. Do not answer the sub questions on new pages but as a continuation.
- 3.** Each question is worth twenty-five (25) marks

## **SECTION A**

### **QUESTION 1 (Compulsory)**

Nhamo Nhamo was arrested without a warrant by members of the Zimbabwe Republic Police (ZRP) on the 20<sup>th</sup> of January 2024. He was never informed of the reason(s) for his arrest and his rights. He was arrested solely because he is the leader of an opposition political party. They took him to a local police station where they detained him in solitary confinement for five (5) days. The police never applied for a warrant for further detention. Nhamo Nhamo was denied an opportunity to communicate with his relatives and legal practitioner. He was interrogated and tortured during the period he was in detention. The police accused him, during interrogation, of wanting to overthrow the head of state. He was later taken to Murahwa Hill where the police threatened to shoot and kill him if he continued denying the allegations. He was then forced to make a confession and sign a warned and cautioned statement incriminating himself. He signed the statement under duress and compulsion at the police station. The statement was then taken to court for confirmation. The police officers advised Nhamo Nhamo that they were going to further torture him should he disclose to the Magistrate that he was forced to sign the statement. The said police officers were seated in court during the confirmation proceedings.

In his confession and statement, Nhamo Nhamo implicated Nero who was also later arrested by the police. Nero and Nhamo Nhamo are now being jointly charged with treason.

Advise Nhamo Nhamo and Nero on:

- I) The admissibility of the confession and warned and cautioned statement against them. **[15 marks]**
- II) The legal steps Nhamo Nhamo can take to challenge the admissibility of the confession and warned and cautioned statement. **[10 marks]**

## **SECTION B**

### **ANSWER ANY THREE (3) QUESTIONS ONLY**

#### **QUESTION 2**

a) Briefly explain the following concepts:

- i) Facts in issue **[5 marks]**
- ii) Circumstantial evidence **[5 marks]**
- iii) Real evidence **[5 marks]**
- iv) *Res gestae* **[5 marks]**
- v) Presumptions **[5 marks]**

#### **QUESTION 3**

Dr. Peter Moyo is a medical practitioner at Murambi Gardens Clinic. On the 12<sup>th</sup> of June 2021 he examined Rumbi pursuant to her having been sexually molested by John Shumba. Dr. Moyo then compiled a statement and medical report after the examination. He stated in the medical report and the statement, he compiled and signed after examining Rumbi, that he concluded that penetration was definitely effected. Both documents were submitted to the police who then filed them in the docket. The matter was subsequently set down for trial on the 30<sup>th</sup> of September 2024. On the trial date, the public prosecutor allowed Dr. Moyo a chance to read his statement and the medical report. The defence counsel argued that Dr. Moyo could not testify since he had already been allowed to read his statement and medical report and as such, his evidence had become inadmissible.

Advise the public prosecutor on the following:

- I) The lawfulness of his conduct of permitting the witness to read his statement and medical report. **[15 marks]**

- II) The admissibility of the evidence of Dr. Moyo and the medical report.

**[10 marks]**

#### **QUESTION 4**

Discuss whether the common law position regarding the admissibility of hearsay evidence applies in civil and criminal proceedings in Zimbabwe. **[25 marks]**

#### **QUESTION 5**

Chop Chop broke into a shop at Makoni Trading Centre in Rusape and stole several items. The police then started looking for him since he was captured by the CCTV committing the offence. Chop Chop confessed to his wife that he was the one who committed the offence. He then went and consulted a legal practitioner. The legal practitioner prepared notes as he was interviewing Chop Chop. Chop Chop was later arrested by the police. He was tortured while in police custody. He divulged to the police that he confessed to his wife and legal practitioner that he was the one who committed the offence. He led the police to recover some of the stolen items. The said items were recovered at his house.

Discuss:

- i) The admissibility of the recovered items and CCTV footage. **[5 marks]**
- ii) Whether Chop Chop's wife and legal practitioner can testify against him. **[15 marks]**
- iii) Whether the police can compel the legal practitioner to release his notes to them. **[5 marks]**

#### **QUESTION 6**

- a) Mugari entered into a lease agreement with Mhaka. He stayed at Mhaka's premises for three (3) months but later vacated without giving notice and paying rentals and utility bills. He also did the same to Makanga and Mudikani. He later entered into a lease

agreement with Handinzarwo and also vacated his premises after staying there for three (3) months without giving notice and paying rentals and utility bills. Handinzarwo later instituted legal proceedings against Mugari claiming payment of the arrear rentals and outstanding utility bills. At trial, Handinzarwo sought to lead evidence from Mhaka, Makanga and Mudikani to confirm that Mugari was in the habit of staying at people's premises and then vacating without giving notice and paying rentals and utility bills.

a) Advise Mugari on the admissibility of the evidence of Mhaka, Makanga and Mudikani

**[15 marks]**

b) Discuss the admissibility of previous convictions in criminal proceedings in Zimbabwe. **[10 marks]**