



**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

**FACULTY OF LAW**

**EXAMINATION PAPER**

**COURSE CODE** : LLB 222  
**COURSE TITLE** : Law of Evidence (2)  
**DURATION** : 3 Hours  
**LEVEL** : 2.2  
**DATE** : 02 DEC 2022

**INSTRUCTIONS TO CANDIDATES:**

1. This question paper comprises of two printed pages.
2. This question paper comprise of four questions.
3. Answer all questions.
4. Start each question on a new page of your answer sheet

### **Question 1**

Ms Mary and her boyfriend are walking back to the university residence from town when they are attacked. Mr Major, the boyfriend, is seriously injured and Ms Mary is assaulted and raped at knife point. Ms Mary tries to defend herself and scratches the attacker. The rape is witnessed by a car guard hiding in the vicinity. He records the attack on his cell phone (video and audio recording). When the attacker flees Mr Major and Ms Mary make their way to a road where they flag down a passing car. Ms Mary is crying, and dishevelled, and immediately says to the driver that she has been raped and needs medical assistance. They are taken to hospital, where blood, semen and skin scrapings are recovered from Ms Mary, and a full medico-legal report is prepared. They then proceed to the police station where they report the crime. They give a description of the attacker to the police as a young male of about 25 years old, wearing a blue jersey and a pair of jeans. Ms Mary reports a distinctive scar on his belly. Mr Sam is picked up in the vicinity of the attack by the police. He matches the description given by Mr Major and Ms Mary, who later identify the man as the attacker from an identification parade. Blood samples are taken from him against his will, and he is forced to reveal the scar on his belly which is photographed. Mr Sam has previously been convicted of the crime of rape. He is charged with assault and rape. Mr Sam is kept in custody. He makes a full oral confession to the police officer who had apprehended him on the night in question. He had not had the benefit of the advice of a lawyer at the time he made the confession. The car guard told his wife about what he had witnessed on the night of the incident. Unfortunately he is killed in a car accident before the trial. At the trial Ms Mary testifies as the complainant.

**Answer the following Ten (10) questions. Refer to case law where appropriate. Each question counts 10 marks .**

1. Can the prosecution lead evidence, or cross examine, Mr Sam on his previous criminal history? Would your answer differ depending on whether it was the main trial or the bail application?
2. Mr Sam wants to lead evidence that he has reformed himself since his previous conviction of rape. He asserts he is a good person and that he is innocent of the crime. He wishes to call his priest to testify that he attends church every Sunday. Discuss the admissibility of such evidence, and its implications for the prosecution's case.
3. The prosecution wish to bring an expert to testify about the blood, semen and skin scrapings found. Discuss the requirements which must be met for such evidence to be admissible. Must the prosecution disclose its intention before the trial?

4. Mr Sam intends to argue that he was forced to provide a blood sample against his will, and that this violates his privilege against self-incrimination, as well as his rights to privacy, dignity and bodily integrity. Is there any merit in his argument?
5. Assume the car guard's wife is to be called as a witness. She will testify as to what her husband told her before his death. What will the nature of her evidence be and in what circumstances would it be admissible?
6. Ms Mary falls apart during cross examination. She is distressed and says her mind has gone blank. Can she be allowed to refer to the statement which she gave the police immediately after the incident, while in the witness box? If so, what requirements must be met?
7. In what circumstances will Mr Sam confession be admissible?
8. Assume it is established that some of the prosecution's evidence was obtained in violation of Mr Sam constitutional rights to dignity and privacy. In what circumstances might this evidence be excluded?
9. The prosecution wants to call the driver of the car to testify about what he saw and heard on the night in question. What type of evidence is the evidence of Ms Mary's physical state, and her statement to the driver? In what circumstances would it be admissible? Can it be regarded as corroboratory evidence? (Tip: you are **not** required to discuss hearsay evidence)
10. Will the evidence of the cell phone video/audio recording be admissible? What requirements must be met?

**[END OF EXAMINATION 100 MARKS]**

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