

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF POLITICAL AND
ADMINISTRATIVE STUDIES
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **CRIMINAL PROCEDURE**

COURSE CODE : **L401/L402**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :

- 1. ANSWER FOUR (4) QUESTIONS**
- 2. ALL QUESTIONS CARRY EQUAL MARKS**

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QUESTION 1

“Legal controls on police powers are a dog on police efforts in fighting crime. Police powers need to be enlarged, not circumscribed so as to enable them to effectively meet the threat posed to society by criminals”. Critically assess this statement. (25 marks)

QUESTION 2

What are the requirements of double jeopardy pleas? (25 marks)

QUESTION 3

Your client is Sergeant Roote. He informs you that he has received a summons in which he is sued for unlawful arrest. He gives you the following statement:

“At about 1.00 p.m. on June 4, 2004, I was traveling home to Siteki on a bus. Before the bus left the bus rank in Manzini, the plaintiff, one Peter Goescht came aboard. He began selling a wide variety of things including some expensive looking car stereos, watches and video cameras. All these things were contained in a bag. He would move about, identify a potential buyer and then present his wares. He was very selective about his customers. He was mostly approaching the more sophisticated looking passengers. I did not see anyone buying off the plaintiff. When he approached me, I asked him how he acquired the things he was selling, he just stared at me and smiled. I then identified myself as a police officer, at which point he put everything in the bag and quickly walked out of the bus. I got very suspicious. To my mind his behaviour suggested that he had either stolen the items or he was in unlawful possession. I followed him and when I caught up with him, I asked him to accompany me to the police station. He did so without resistance. The plaintiff was put in police cells for one day and then he was released. Up to the present day, the police have not preferred any charges against him”.

You are required to write an opinion stating your client’s prospects in the action for unlawful arrest. (25 marks)

QUESTION 4

In the case of R v Knitzinger 1952(2) 1A 401 (w) Roper J., states that when an application is made at the close of the prosecution’s case for the discharging the accused on the grounds that there is no evidence upon which he might be convicted, the court, in its discretion, may refuse to grant the application if there is a possibility that the prosecution’s case might be strengthened by the defence evidence.

Discuss the soundness of this decision in light of recent developments in the law on the issue. (25 marks)

QUESTION 5

Write a memorandum for a new judge on the implications of the amendment of Section 174 (4) of Act No 67 of 1938. (25 marks)