

Course Code: L401/L402 (S) 2005

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 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

You are representing an accused person charged with fraud. He expresses to you his conviction that the Magistrate cannot possibly be impartial since he is the President of a rival football club. More than this, the Magistrate is known informally as the “fraud magistrate”. On account of his strong views which have been publicised in learned journals and in the popular press regarding fraud and the role of the courts in dealing harshly with its perpetrators. What would be your advice to your client?

[25 MARKS]

QUESTION 2

The law of Criminal Procedure is increasingly coming to terms with the prejudice that may be suffered by an unrepresented accused in a criminal trial. Several duties are imposed by the common law on the judicial officer which reflect an attempt to ensure that the accused participates meaningfully in the trial, as is expected in an adversarial system of criminal justice. Discuss five of these duties.

[25 MARKS]

QUESTION 3

Describe the criminal jurisdiction of the Magistrate Court regarding offences and sentences.

[25 MARKS]

QUESTION 4

Under what circumstances may a court discharge an accused at the close of the case for the prosecution?

[25 MARKS]

QUESTION 5

“In Swaziland there is a distinction between the Attorney General and the Director of Public Prosecutions (DPP). The DPP is responsible for prosecution whereas the AG is the Government’s legal advisor and it is deemed necessary to separate the two offices” - The Swazi Observer of Tuesday July 31 1990 at page 1.

Notwithstanding the above argument, Section 3 of the Criminal Procedure and Evidence Act, 67 of 1938 provides that

“The Attorney General in accordance with the powers conferred upon him by Section 91 of the Constitution is vested with the right and entrusted with the duty of prosecuting in the name and on behalf of His Majesty the King in respect of any offence committed in Swaziland”.

Aware of what appeared in The Swazi Observer and the provision of Section 3 of the Criminal Code, the Chief Editor of the Swazi Observer requests you to write a report for publication in which you clearly discuss:

- (a) The confusion, if any, between the office of the AG and that of the DPP in matters concerning criminal prosecution in Swaziland. [10 MARKS]
- (b) Having determined who is responsible for criminal prosecution in Swaziland, the powers and duties of such an office. [15 MARKS]