

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION, JULY 2006

TITLE OF PAPER : CRIMINAL PROCEDURE

COURSE CODE : L 402

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

The accused, Mr. Dzelakufa was on the 4th March, 2005 indicted the offence of high treason. It was alleged that on or about the 4th January, 2005 at Mbabane National Court, the accused used explosives to damage the National Court building.

On the day of his arrest the accused was kept incommunicado for a week. He was subsequently brought to court and charged with the offence of high treason. With the help of a friend who was trained in law, the accused pleaded guilty to the charge of high treason and the prosecution accepted the plea. A statement of agreed facts was subsequently filed by the prosecution on the basis of which the accused was convicted. He was sentenced to a term of ten years imprisonment. He now instructs you to take the matter on review. Citing pertinent authority, advise the accused.

[25 MARKS]

QUESTION 2

In Swaziland, there is a distinction between the Attorney General and the Director of Public Prosecution (DPP). The DPP is responsible for prosecution whereas the Attorney General is the principal legal advisor to the government (Sections 77(3) and 162(4)(a) of the Constitution Act, 2005. Notwithstanding these provisions, Section 3 of the Criminal Procedure and Evidence Act, 1938 provides as follows "The Attorney General in accordance with 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".

Discuss the legal position, powers and duties and relationship between the two offices in matters concerning criminal prosecution in Swaziland. Support your answer with authority.

[25 MARKS]

QUESTION 3

In the ordinary course, the Director of Public Prosecutions has an absolute discretion whether/not to institute or continue criminal proceedings. The court has no power to interfere with such discretions. Making reference to decided cases discuss this statement.

[25 MARKS]

QUESTION 4

"An individual's statutory power to institute a private prosecution is a "safety valve "so to speak, in the machinery of the law. It is also to some extent an indirect method of controlling corruption or incompetence in the state's prosecutorial services". Per Geldenhuyelal "Criminal Procedure Handbook, 2000, p.57. Do you agree? Discuss this quotation with reference to decided cases and other authority.

[25 MARKS]

QUESTION 5

In recent years the Non Bailable Offences Order No 14/1993 has been challenged in the Court of Appeal. Citing decided cases, on what basis has this law been challenged? How has the Non Bailable Offences Order affected the law relating to bail in Swaziland.

[25 MARKS]