

UNIVERSITY OF SWAZILAND

SUPPLEMENTARY EXAMINATION PAPER, JULY 2007

TITLE : CRIMINAL PROCEDURE
COURSE CODE : IDE-DL014
TIME ALLOWED : THREE (3) HOURS
TOTAL MARKS : /100
INSTRUCTIONS : ANSWER FOUR QUESTIONS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS
BEEN GRANTED BY THE INVIGILATOR.**

Question 1 (25 marks in total)

- (a) What is the meaning of the term “jurisdiction”? (5)
- (b) Discuss the major features of the criminal jurisdiction of the courts in Swaziland. (15)
- (c) Jurisdiction in Swaziland is personal. State whether this is true or false and give reasons for your opinion. (5)

Question 2 (25 marks in total)

- (a) What does the term “appeal” mean? Explain and give examples of courts with appellate jurisdiction. (6)
- (b) What does the term “review” mean? (4)
- (c) In short notes, explain the following:
 - 1. prima facie (3)
 - 2. lis pendens (3)
 - 3. locus standi (3)
 - 4. bona fide (3)
 - 5. nolle prosequi certificate (3)

Question 3 (25 marks)

Zodwa is Siphos girlfriend. Siphos stabbed to death by Jabulani in a brawl at a local shebeen. The Director of Public Prosecutions declares that the State will not prosecute Jabulani since Siphos was the aggressor. Zodwa comes to you for advice.

What advice will you give her? Is Zodwa entitled to be a private prosecutor? If so, what requirements need to be fulfilled to allow her to privately prosecute?

Question 4 (25 marks in total)

- (a) Why must criminal proceedings be held in public and in the presence of the accused?
- (b) What is the role of a judicial officer in criminal proceedings?
- (c) Under what circumstances should a judicial officer recuse himself?
- (d) Can the accused appear unrepresented in court? What are the courts duties towards the unrepresented accused?

Question 5 (25 marks in total): state whether the following statements are true or false:

- 1. The Director of Public Prosecutions may stop criminal prosecution instituted by his office at any stage.
- 2. The accused may not cross-examine witnesses.
- 3. In Swaziland jurisdiction is personal.
- 4. In *Barclays Zimbabwe Nominees (Pty) Ltd v Black* 1990 (4) SA 720 (A) the Appellate Division limited the availability of the right to institute private prosecution to natural persons only.
- 5. The *nolle prosequi* certificate strongly resembles the *writ of mandamus*.
- 6. The purpose of a search warrant is the procurement of people to use in proving a criminal case.

7. "substantial and peculiar interest" was explained in *Attorney-General v Van der Merwe and Bowman* 1946 OPD 197.
8. The High Court can hear appeals from decisions of magistrate courts and the Higher Swazi Court of Appeal.
9. The Swazi Criminal Procedure and Evidence Act is largely based on the South African Criminal Procedure and Evidence Act 31 of 1917.
10. Swazi courts can hear any case involving 'members of the Swazi nation'.
11. A clear definition of 'arrest' can be found in Part V of the Criminal Procedure and Evidence Act.
12. A peace officer can make an arrest without warrant of a person who commits an offence in the presence of the peace officer.
13. Police officers may make arrests without warrants if the object of the arrest is to interrogate or to investigate a suspect.
14. In *Thabsile Mngadi v Attorney-General & another* 1982-86 SLR 238 (HC) the Chief Justice held that six days was within the statutory period for detention following arrest without warrant.
15. Where a person has killed another and wishes to invoke section 41 of the Criminal Procedure and Evidence Act, the onus is upon him to show on a preponderance of probabilities that the requirements of the section were satisfied.
16. In a case of unlawful arrest, the arrested person may sue the government, the office of the Police Commissioner and the police officer(s) who effected this unlawful arrest.
17. The word 'charge' refers to both indictments in High Court proceedings and charge sheets in Magistrate's Court proceedings.
18. The rule against splitting of charges was expounded in *S v Grobler* 1966 (1) SA 507 (A).
19. In terms of section 135 (1) of the Criminal Procedure and Evidence Act only one person may be charged in the same indictment or charge sheet with the same offence.
20. *Autrefois convict/autrefois acquit* is based on a common law maxim.
21. A plea to the jurisdiction serves as a defence to a charge in terms of section 140 (1) of the Criminal Procedure and Evidence Act, according to which the court may direct that the accused should be tried before the appropriate court.
22. "Lis pendens" is explicitly referred to in the Criminal Procedure and Evidence Act.
23. The "nemo iudex in causa sua" principle can be applied to cases where the judicial officer presides over a trial in which s/he has an interest.
24. In *Caiphas Dlamini v R* 1982-86 SLR 309 (CA) it is stressed that judges should refrain from interfering unnecessarily in court proceedings.
25. Post-conviction proceedings include the establishment of aggravating or mitigating circumstances, as well as compensation proceedings.

Question 6 (25 marks in total)

- (a) Outline the role of the judicial officer in criminal proceedings. (15 marks)

(b) There are cases when a judicial officer should recuse him/herself. State these and explain the importance of the related natural justice principle that 'no man should be judge in his own case'. (10 marks)