

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2008

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.

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

QUESTION 1

You are the Prosecuting Counsel in the matter where the accused Lugodvo Dlongolo is charged with arson, malicious injury to property and rape. You will be calling a total of ten witnesses in support of your case. Hazel Mhlophe is one of your witnesses. Ms Mhlophe recorded a statement with the Police to the effect that the accused, was, at the time the offence was committed her boyfriend and that she saw the accused light up the house belonging to the complainant with a match and later dousing it with petrol. The bone of contention, she had said, was that the complainant had repeatedly failed to keep her dogs on leash and that the dogs had a habit of coming to the home of the accused and soiling his yard and uprooting accused's flowers. Ms Mhlophe had further told the Police that her boyfriend had repeatedly warned the complainant to desist from letting her dogs loose on accused's property, to no avail. Ms Mhlophe had also told the Police that on the day the accused burned down the complainant's house he had uttered words to the effect that "*ngiyacedza ngawe naletigolwane takho lamuhla*" which translates to "I'm done with you and your dogs today". Ms Mhlophe understood these words to mean that the accused was done with the complaint and her dogs through setting her house alight.

On the trial date, and when Ms Mhlophe was led in evidence, she denied any knowledge of the role the accused played in the commission of the offences charged. She also denied ever being associated with the accused in any way. She admitted however that the accused was known to her. All the while Ms. Mhlophe was giving evidence, defence counsel would not stop smiling and made his intention clear that he could not wait to cross examine this crown witness. During a short adjournment of the case the accused was heard saying to ms Mhlophe "*awuzwa ke sthandwa sami*" which translates to "you did well my love". When the court resumes you are still on your feet as prosecuting counsel. What do you do in light of the fact that the witness has made a complete turn about in her evidence from what was contained in her statement to the Police. Discuss making reference to relevant authorities. [25 MARKS]

QUESTION 2

Mr Let Rip is charged with murder at the High Court of Swaziland. He pleads guilty to the charge of murder. Mr Go Slow is charged with pick pocketing in the Manzini Magistrates Court. He pleads guilty to the charge of pickpocketing. What is the procedure in the Magistrates Court.? Is the procedure similar to that followed in the High Court where accused pleads guilty to a serious offence such as murder?

[25 MARKS]

QUESTION 3

Patrick Mavuso is an accomplice witness in the matter involving John Msibi, Joseph Sifundza, Sikhatsi Matsenjwa, Matatazela Fakudze, Mfanzile Simelane and Majikane Mncina. On the 23rd June, 1996, the John Msibi accused persons and Joseph Sifundza left Matsapha for Dvokolwako to commit a robbery at the homestead of Raymond Masuku's homestead who is a businessman. On arrival at Masuku's homestead, John Msibi and Joseph Sifundza gained entry through the back door and found a boy, an old woman and two girls in the house. From the occupants of the house, they demanded at gun point, money which they were given. They drove to Joseph Sifundza's home in Matsapha where they shared the loot among themselves.

On the 2nd June, 1996 the accomplice witness left Matsapha with John Msibi, Sikhatsi Matsenjwa and Mfanzile Simelane in a Nissan LDV, SD 403 BN on a mission to rob Score Supermarket at Thabankulu. On arrival at Thabankulu, they went to the Manager's house where they found him with his two children. John Msibi was armed with a pistol while Mfanzile Simelane was armed with a shot gun. John Msibi and Mfanzile Simelane escorted the Manager to his cashier's house while this witness kept guard over the Manager's children. After some time Msibi and Simelane returned with the Manager and a certain lady. The Manager, his children and the lady were then locked into one room by the accomplice witness and Msibi. They then drove to Matsapha where they shared the sum of E10,000.00 among themselves.

2 8881 Detective Constable Vusi Lubhedze received information and on the 26th July 1996 proceeded to Matsapha with ten other police officers. They went to Msibi's home in Matsapha and arrived there at 5.30 a.m. On arrival at Msibi's home, they introduced themselves as Police Officers and explained their mission to Msibi. Msibi gave them permission to search the house and his premises. Joseph Sifundza was found under the bed in Msibi's bedroom, Fakudze, Simelane and Mncina were found sleeping in the dining room. In the garage, police found a Nissan Van with the registration NO. SD 403 BN. Sifundza said the motor vehicle belonged to him. Inside the motor vehicle, Detective Constable Lubedze found two AK 47 rifles and magazine from the motor vehicle. When they were asked about the firearms, all accused persons denied knowledge of same. Twenty five live rounds of ammunition were found when the magazine was emptied. The accused had no licence for possession of the two AK 47 rifles. They were subsequently arrested and detained in the Manzini Police Station.

Draft the necessary papers to initiate criminal proceedings in this matter.

[25 MARKS]

QUESTION 4

The concept of "locus standi" as stated in the Criminal Procedure and Evidence Act, 1938 has been turned on its head by the various decisions in environmental litigation. Discuss the validity or invalidity of this statement citing relevant authorities.

[25 MARKS]

QUESTION 5

According to Smit J in *Black v Barclays Zimbabwe Nominees (Pty) Ltd* 1990 (1) SALR 433 (w), "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." Do you agree? Discuss the validity/invalidity of this statement, making reference to authorities.

[25 MARKS]