

UNIVERSITY OF SWAZILAND

MAIN EXAMINATION PAPER, MAY 2009

TITLE OF PAPER: CRIMINAL PROCEDURE

COURSE CODE: IDE-DL014

TIME ALLOWED: THREE (3) HOURS

TOTAL MARKS: /100

INSTRUCTIONS: ANSWER THREE QUESTIONS: QUESTIONS 1 AND 2 ARE COMPULSORY; YOU MAY CHOOSE THE ADDITIONAL QUESTION FROM QUESTIONS 3 TO 6.

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): 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 3 (25 marks)

a. Know your cases

1. In which South African case was it stated that any person may liberate another who has been unlawfully arrested?
2. In which South African case was it stated that the person who attempts to arrest must have the power to arrest the offender or to assist in his arrest?
3. In which Swazi case was it stated that the person who invokes S. 41 (1) must have intended to effect an arrest of the deceased?
4. In which South African case was it stated that the application for a warrant of arrest must state that there is reasonable suspicion, from the information taken upon oath, that the person in respect of whom the warrant is sought has committed the alleged offence?
5. In which South African case was it stated that the arrested person must be informed of the reasons or cause of his/her arrest?
6. In which Swazi case was it stated that six days was clearly in excess of the statutory period regarding the first appearance in court after arrest?
7. In which South African case was it stated that the arrested person should be brought to a police station as soon as possible after arrest?
8. In which South African case was it stated that it is unlawful to arrest to harass or to frighten someone?
9. In which South African case was it stated that it is unlawful to arrest someone to investigate a case further, that it is only lawful to arrest someone to bring that person to court?
10. In which Swazi case was the concept outlined in question 9 reiterated?

b. Know your statutes

1. In which Section of the CPE Act was it stated that there is always a civil right which any person has in respect of wrongful or malicious arrest?
2. In which Section of the CPE Act was it stated that if an accused cannot be apprehended or prevented from escaping by any means other than killing him/her, such killing shall be deemed justifiable homicide?

3. In terms of which Section of the CPE Act may a magistrate issue a warrant of arrest upon the written application of the Director of Public Prosecutions, the local public prosecutor or a commissioned police officer?
4. In which Section of the CPE Act was it stated that a person who makes an arrest without warrant must immediately inform the arrested person of the cause of the arrest?
5. In which Section of the CPE Act was it stated that "first appearance" by the arrested person does not normally constitute the beginning of the trial?
6. In which Section of the CPE Act was it stated that the owner of any property or any person authorized by the owner may arrest a person found committing an offence on the property without warrant?
7. According to which Section of the CPE Act should a person arrested without a warrant not be detained in custody for a longer period than is reasonable in all the circumstances of the case?
8. In which Section of the CPE Act was it stated that a private person who sees a person fighting or rioting may effect an arrest without warrant for the purposes of stopping the fight or riot?
9. Which Sections of the CPE Act deal with citizen's arrest?
10. In which Section of the CPE Act was it stated that a peace officer is authorized to arrest a person that s/he reasonably suspects of committing an offence as listed in Part II of the First Schedule?
11. In terms of which Section of the CPE Act has a peace officer the right to arrest a person who commits an offence in his/her presence?
12. In which Sections of the CPE Act are the specific instances which are at the basis of an arrest stipulated?
13. In which Section of the CPE Act was it stated that a peace officer may have to give evidence regarding the commission or suspected commission of an offence?
14. Which Section of the CPE Act allows a judicial officer who sees an offence being committed to personally arrest the offender or even to authorize others to make the arrest?
15. Which Section of the CPE Act outlines the categories of people who may be arrested without a warrant?

Question 4 (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 5 (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 6 (25 marks in total)

- (a) Why must criminal proceedings be held in public and in the presence of the accused? (5 marks)
- (b) What is the role of a judicial officer in criminal proceedings? (5 marks)
- (c) Under what circumstances should a judicial officer recuse himself? (5 marks)
- (d) Can the accused appear unrepresented in court? What are the courts duties towards the unrepresented accused? (5 marks)
- (e) What does the concept of bail entail? (5 marks)