

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**MAIN EXAMINATION PAPER, MAY, 2009**

**TITLE OF PAPER: CRIMINAL PROCEDURE**

**COURSE CODE: L 402**

**TIME ALLOWED: THREE HOURS**

**INSTRUCTIONS: 1) ANSWER FOUR (4) QUESTIONS**

**2) ALL QUESTIONS CARRY EQUAL MARKS**

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### **QUESTION 1.**

The Police Service is a vital organ in the administration of criminal justice. The law should enable and not disable police efforts in the fight against crime. Police powers should therefore be enlarged and not circumscribed so as to enable them to effectively meet the threat posed to society by criminals.

Critically assess this statement, making references to authorities.

(25 Marks)

### **QUESTION 2.**

Luvalo Lubhedze is an accused person who has been charged with rape with aggravating factors. It is alleged that he committed this offence on the 8<sup>th</sup> September, 2006 at Maliyaduma, Manzini. The survivor of the sexual abuse is a girl of 8 years old who is a scholar in one of the public schools at Maliyaduma. The girl has been infected with the HIV virus and is presently on Anti retroviral treatment. The girl is orphaned as her parents died in a car collision in the year 2002. The accused is also charged with two counts of robbery in that on the 9<sup>th</sup> December, 2007 he robbed Londlala Mini a sum of E2,000 while threatening her with an AK 47 assault rifle. He is also said to have robbed Peter Brown his BMW X5 and also threatened him with a firearm. The accused is also alleged to have impaired the dignity of Lusweti Lumphondvo on the 4<sup>th</sup> May, 2007 at the Manzini bus rank. The Directorate of Public Prosecutions has determined that the accused person will appear before the Principal Magistrate's court as the High court has a backlog of cases and is also bedeviled by the problem of shortage of judges.

Which court has the power to hear this matter? Give reasons for your answer and draft the necessary papers initiating prosecution in this matter.

(25 Marks)

### QUESTION 3.

Hlomula Dlakudze and Spit-Fire Brown are charged with two counts of murder, one of arson and three counts of housebreaking and theft. They appear before judicial officer A who declines to hear the matter on the basis that both accused persons are his neighbours. The accused persons subsequently appear before judicial officer B and he declines to hear the matter on the basis that he went to the same University with the parents of Hlomula Dlakudze. Both accused persons thereafter appear before judge C who also declines to hear the matter on the ground that Hlomula Dlakudze is his chief.

a) Are the judicial officers entitled in law to decline to preside over this matter for the reasons advanced? Give reasons for your answer citing relevant authorities where appropriate. (12 Marks)

b) Draft the relevant papers for instituting of criminal proceedings in this matter.

(13 Marks)

### QUESTION 4.

The Environment Management Act, 2002 (EMA) has usurped the powers of the Directorate of Public Prosecutions in the prosecution of environmental crimes much against the text and spirit of the Constitution Act, 2005. Do you agree?

Critically evaluate the validity of this statement citing relevant authorities.

(25 Marks)

### **QUESTION 5.**

In the case of *Rex v Msombuluko Masombuka* the prosecution is calling ten witnesses. The accused is charged with the offence of Rape. The complainant is a girl aged ten years. PW1 is an eye witness, while PW2 as a medical practitioner will be called to provide corroborative evidence. The other witnesses testify to the effect that the accused is known to them to be trouble maker while one other witness states that he saw the accused on the day he is alleged to have committed the offence—only that he left him in a drinking spot. All but the eye witness and the medical practitioner come to court to give evidence in the matter. PW1 tells the court that he has forgotten everything pertaining to the case and that in fact he never made a statement to the police but instead he was made to sign a statement whose contents he did not know. PW2 on the other hand tells the court that he is busy and has no time to waste with court proceedings as they tend to drag “forever” and yet, as a private medical practitioner, he has a business to run. You are prosecuting Counsel in this matter.

What is the procedure to be followed in cases where witnesses behave in the manner PW1 and PW2 have behaved?

(25 Marks)