

UNIVERSITY OF SWAZILAND

MAIN EXAMINATION PAPER, MAY 2010

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)

Give brief explanations of the following concepts:

- (a) a search warrant (5)
- (b) private prosecution (5)
- (c) reasonable ground for suspecting (5)
- (d) vexatious prosecution (5)
- (e) bail (5)

Question 2 (25 marks in total)

State whether the following are true or false:

1. The Director of Public Prosecutions can only stop criminal proceedings if the judicial officer agrees with it.
2. The judicial officer is involved during the preliminary procedures preceding the court case.
3. In Swaziland criminal jurisdiction is territorial.
4. Swazi courts have jurisdiction over any case involving members of the Swazi nation.
5. In private prosecution cases, the private party may be ordered to pay, in part or in full, for the expenses incurred by the accused person if, in the result, he is acquitted.
6. A police officer can, under all circumstances, arrest a person without a warrant.
7. A court must, at the conclusion of criminal proceedings, hand seized property to the person who seized it.
8. The Appeal Court in Swaziland only has appellate jurisdiction.
9. Since its inception, the Criminal Procedure and Evidence Act has never been amended.
10. In *Thabsile Mngadi v Attorney-General & Another* 1982-86 SLR 238 (HC), it was held that six days was not in excess of the statutory period for detention by the police after arrest without a warrant.
11. The requirements for justifiable homicide include that it is only available, as a defence, in respect of serious offences set out in Part II of the First Schedule.
12. A judicial officer can personally make an arrest, without warrant, of a person who commits an offence in his/her presence.
13. Police officers may make arrests without warrants if the object of the arrest is to interrogate or to investigate a suspect.
14. The *Nkosinathi Vilakati & Another v The King* Crim. App. 12/93 (Court of Appeal) [unreported] indicates that failure to afford the accused his right to address the court constitutes a material irregularity in the proceedings.
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. The judicial officer has no duty with regard to an unrepresented accused.
17. An indictment in High Court proceedings refers to something different from a charge sheet in Magistrate's Court proceedings.
18. The rule against splitting of charges was expounded in *S v Nkwanyana* 1990 (4) SA 735 (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. When an accused enters a plea of guilty, the automatic consequence is that the Court will have to convict him or her.
21. According to the Criminal Procedure and Evidence Act, a plea wrongly entered may be altered subsequently.
22. A trial can never be held in camera.
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 granting a pardon the King decides alone according to Section 92(4) of the Criminal Procedure and Evidence Act.
25. Post-conviction proceedings include the establishment of aggravating or mitigating circumstances, as well as compensation proceedings.

Question 3 (25 marks in total)

- (a) Does the law give the police sufficient means of securing evidence through the power to search and seize items? Give the reasons for your answer. (10 marks)
- (b) Give a definition of arrest and indicate which people can make an arrest without warrant. (5 marks)
- (c) What remedies are available if you have been wrongfully arrested? (6 marks)
- (d) Set out four occasions where the court may order that a criminal trial proceed *in camera*. (4 marks)

Question 4 (25 marks in total)

- (a) List and explain the different types of plea which can be submitted to a court. (15 marks)
- (b) What does double jeopardy mean? (5 marks)
- (c) Discuss the effects of a plea of not guilty in a criminal trial? (5 marks)

Question 5 (25 marks in total)

- a. Describe the effect of bail (10 marks)
- b. Discuss the provisions relating to the issuing of a search warrant (10 marks)
- c. Choose the correct answer (a, b, c, d or e) to the following question: In considering the question whether to grant bail to an accused, the court decides the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice s/he is likely to suffer if s/he were to be detained in custody. The following factors may be taken into account by the court:
- a. the time already spent by the police on the investigation of the case,
 - b. the state of health of the presiding officer,
 - c. the media cover the case has already received,
 - d. a and c,
 - e. none of the above. (5 marks)

Question 6 (25 marks in total)

The Constitution of Swaziland, Act 1 of 2005, contains two important sections with regard to criminal procedures: Section 21 (Right to Fair Hearing) and Section 22 (Protection against Arbitrary Search or Entry).

Discuss both Sections with a view of exposing how they have changed the outlook of criminal procedure in Swaziland.