

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, MAY, 2010

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.

Jaan Chi is arrested on a murder charge. He is Chinese and speaks neither English nor SiSwati. After his arrest he is not informed of the reason for his arrest nor of any of his other constitutional rights. He takes the police to his home and it is unlawfully searched and a knife covered in blood is found. During the murder a struggle between the victim and the assailant had ensued and hair and tissue samples not belonging to the victim were found on the scene. Hair and tissue samples, as well as fingerprints, are taken from the arrested person. He is detained pending the outcome of tests by the forensic and fingerprint expert. A week later the results are made available and it appears that the fingerprints on the murder weapon and the hair and tissue samples match those of the person under arrest. A decision is made to charge the suspect.

Critically evaluate the difference between formal and material justice raised by the facts of the above case. Make reference to authorities.

(25 Marks)

QUESTION 2.

Bongani Dlongolo of Makhonza area in the Shiselweni District under chief Nsukuwansuku is employed as the Customs and Excise Controller in the Department of Customs and Excise, Mbabane Railway office. On divers occasions between the years 2005 to April 2008 he received monies in excess of Five hundred thousand Emalangenani (E500,000-00). While this money was in Bongani Dlongolo's possession, it was discovered that there was a general deficiency of Two Hundred Thousand Emalangenani (E200,000-00). Ten witnesses will be called by the Prosecution to prove the case against the accused person. Certain documentary evidence will also be led by the Prosecution in this respect.

Draft the necessary papers to help initiate prosecution of the accused person in this matter.

(25 Marks)

QUESTION 3.

A prominent legal practitioner was charged, tried and convicted of defrauding and embezzling money from his clients in the High court of Swaziland. The matter was postponed to enable defence Counsel to

prepare to lead mitigating factors on behalf of the accused person. Before the matter resumed, a judgment reflecting the verdict and sentence of the accused in this matter was leaked to defence Counsel. On the day of continuation of the trial, in open court, defence Counsel told the court that "he had no time to waste mitigating as the court had already made up its mind to sentence his client to a term of five years imprisonment". In this respect, he produced the judgment and tendered it in court in support of his submission. In a disparaging manner, defence Counsel told the presiding officer that if he was a judge worth his salt he should have long recused himself as what he had done was a travesty of justice. The matter was then postponed *sine dine*.

You are an expert in Criminal Procedure, prepare a brief on the next course of action the court should follow. In your brief state if Defence counsel followed the law in the manner he addressed the issue before court. Make reference to authorities.

(25 Marks)

QUESTION 4.

Imvelo Yetfu is a Non Governmental organization whose responsibility is to conserve and protect the environment. The NGO also helps litigate in cases of environmental degradation and where environmental crime is committed. The NGO has its offices in Mambane area in the Lubombo region. In October 2008 the residents of Mambane complained about a company that had set up shop in their area. The residents stated that the company was polluting the water from the only river they had in their area. They also complained about the effluent that the company was emitting into the air. They stated that they now suffered from recurrent respiratory diseases and a variety of cancers all traceable to the pollution of their environment by this company. As with most rural communities, this community was poor and did not have the means to institute proceedings in court, not that they knew this could be done. Having heard about these complaints, Imvelo Yetfu NGO decided to take up the matter on behalf of the Mambane community. They approached the High court for a remedy. Defence Counsel argued that the NGO had no *locus standi* to prosecute in this matter as it did not comply with provisions of the Criminal Procedure and Evidence Act/ 1938. Defence Counsel further argued that it is only the Directorate of Public Prosecutions who is *dominus litis* in the prosecution of criminal matters.

You are an expert in issues of prosecution of environmental crimes and you are asked to prepare a brief for the judge presiding in this matter. Advise the court making reference to authorities.

(25 Marks)

QUESTION 5.

The Constitution Act, 2005 read with certain proposed Bills make radical inroads on the criminal jurisdiction of courts in Swaziland. Critically evaluate the validity or invalidity of this statement.

(25 Marks)