

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 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.

Bruce Brown and Dumangani Lumphondvo are Swazi citizens of Sidzakeni area in the Shiselweni region under chief Mafohlo. On the 19th November, 2008 they were found in possession of 5,002 counterfeit notes with a face value of E1,000,400-00. They were arrested by PW1 100001 constable Luhleko Zwane assisted by PW2 1009 Sergeant Mahloba Nhlabatsi. On the 19th November, 2008 at about 1115 hours the arresting officer acting on a tip-off proceeded to Sidzakeni with sergeant Nhlabatsi. Upon arrival at Sidzakeni, they met PW 3 4355 Constable Msombuluko Motsa on his motor cycle which was stationery in front of Motor vehicle SD 401XS. Bruce Brown was standing by the driver's door of the said vehicle and Dumangani Lumphondvo was standing next to the passenger's door. PW 1 then requested for permission to search the vehicle. Bruce Brown granted him permission to search the vehicle. PW 1 conducted a search but decided to do a thorough search at the Police station as they were on a busy road. PW 1 asked both accused person to proceed to Nhlangano Police station and both agreed. Upon arrival at the Police station PW1 proceeded with his search in the presence of both accused persons. At the back seat, PW 1 found a blue plastic bag and opened it. He opened it and found a light blue cloth (umgcula). He opened the cloth and found ten (10) bundles of counterfeit E200-00 notes. The counterfeit notes were counted in the presence of accused persons and they amounted to E1,000,400-00 i.e 5,002 counterfeit notes. The accused persons were then cautioned and charged. The counterfeit notes were confirmed as such after examination by an expert.

Draft the necessary papers to institute criminal prosecution in this matter.

(25 Marks)

QUESTION 2.

Compare and contrast the criminal jurisdiction of the Magistrates courts in Swaziland with that of the Magistrates courts in the Republic of South Africa. In what way is our law in need of reform in this respect, if at all?

(25 Marks)

QUESTION 3.

Sithandwa Mavimbela is employed by the University of Swaziland, Kwaluseni campus as a cleaner. On the 5th May, 2004 he is alleged to have stolen a ream of photocopying papers and one computer from one of the offices he was responsible for cleaning. After an internal disciplinary hearing, the accused was dismissed from the University of Swaziland for breaching University Regulations by appropriating to himself that which was the property of his employer. The accused was subsequently arrested, charged, tried and convicted in the Swazi court, Piggs-Peak for theft of the said property belonging to the University of Swaziland. He was sentenced to a term of 4 years imprisonment without an option of a fine. While the accused was still giving his evidence, the presiding officer quipped that "I do not particularly like thieves, especially those who steal from their employers". The accused is desirous of having the tag of "ex-convict" expunged from his personal record as he feels it will militate against him getting employment with other companies in the future. He approaches you, an expert in Criminal Procedure for advice. Advise Mavimbela making reference to relevant authorities.

(25 Marks)

QUESTION 4.

The provisions of the Environment Management Act, 2002 on prosecution of environment crime run counter to the provisions of the Constitution Act and those of the Criminal Procedure and Evidence Act regarding the powers of the Directorate of Public Prosecutions as *dominus litis* in matters of public prosecution. Critically evaluate the validity or invalidity of this statement. Make reference to authorities.

(25 Marks)

QUESTION 5

The golden rule is that "an indictment or charge sheet should inform the accused in clear and unmistakable language of the charge he has to meet"-*Pillay 1975 (1) SA 919 (N)*. Discuss the procedure that must be followed when the Director of Public Prosecutions institutes public prosecution in both the Superior and in the Lower courts. In what way is the law in need of reform if at all?