

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2011

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.

You are representing an accused person who is charged with fraud. He expresses to you his conviction that the magistrate cannot possibly be impartial since he is the President of a rival football club. More than this, the Magistrate is known informally as the "fraud magistrate" on account of his strong views which have been publicized in the learned journals and in the popular press regarding fraud and the role of the courts in dealing harshly with its perpetrators. What would your advice be to your client. Support your answer with 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 Emalangeni (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 Emalangeni (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 die*.

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.

The right to a fair trial is one of the fundamental aspects of a criminal trial. Critically assess this statement and support your answer with relevant authorities.

(25 Marks)

QUESTION 5.

The Constitution of Swaziland 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)