

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DIPLOMA IN LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 2013

TITLE OF PAPER: CRIMINAL PROCEDURE

COURSE CODE: IDE-DLO14

TIME ALLOWED: THREE (3) HOURS

TOTAL MARKS: /100

**INSTRUCTIONS: ANSWER FOUR QUESTIONS 1 and 2
WHICH ARE COMPULSORY**

And

**TWO ADDITIONAL QUESTIONS
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 a brief explanation 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 Nkwanyane 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 she / 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 (25marks in total)

(a) What does the term “appeal” mean? Explain and give examples of courts with appellate jurisdiction (6)

(b) What does the term “review” mean? (4)

(c) In short notes, explain the following;

1. *Prima facie* (3)
2. *Lis pendens* (3)
3. *Locus standi* (3)
4. *Bona fide* (3)
5. *Nolle prosequi certificate* (3)

QUESTION 4 (25 marks in total)

- (a) Why must criminal proceedings be held in public and in the presence of the accused? (5)
- (b) What is the role of a judicial officer in criminal proceedings? (5)
- (c) Under what circumstances should a judicial officer recuse himself? (5)
- (d) Can the accused appear unrepresented in court? What are court's duties towards the unrepresented accused? (5)
- (e) What does the concept of bail entail? (5)

QUESTION 5 (20 marks in total)

- (a) What does double jeopardy mean? (5)
- (b) What are the effects of a plea of not guilty in a criminal trial (5)
- (c) Does the law give the police sufficient means of securing evidence through the power to search and seize items? Give reasons for your answer. (10)

QUESTION 6 (20 marks in total)

- (a) Why is the charge sheet so important? (5)

- (b) Why is splitting of charges prohibited? (5)

- (c) Discuss the three procedural rights of an accused in a criminal trial. (10)