

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, DECEMBER 2012

TITLE OF PAPER : **CRIMINAL PROCEDURE**
COURSE CODE : **L402**
TIME ALLOWED : **THREE (3) HOURS**
TOTAL MARKS : **100**
INSTRUCTIONS : **ANSWER QUESTION 1 AND 3 OTHER**
QUESTIONS

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GRANTED BY THE INVIGILATOR TO DO SO.**

Question 1 (COMPULSORY)

A magistrate who ordinarily sits at the Mbabane Magistrate's Court goes to the Manzini Magistrate's Court to preside over a rape case. The rape is alleged to have occurred at Sidwashini in the Hhohho District. At the commencement of the trial, the magistrate tells the accused that he has read the charge sheet and has noticed that the victim of the crime is 7 years of age. For this reason, he tells the accused that the victim might be scared of testifying against him. The magistrate then orders the accused to present evidence why the court should not find him guilty of rape. The accused tells the court that he is not guilty and refuses to give evidence in his defence. After allowing the prosecution to present evidence, the magistrate then convicts him of the charge and sentences him to a term of imprisonment of 10 years.

Discuss the legal position.

(25 marks)

Question 2

- (a) What is the significance of the judgments of the then Court of Appeal in *Professor Dlamini v The King* Criminal Appeal 41/2000 and *Ray Gwebu and Another v Rex* Criminal Appeals 19/2002 and 20/2002?(15 marks)
- (b) Discuss *Dlamini and Others v Minister for Justice and Director of Public Prosecutions* 1982-86 SLR 376 (HC) in relation to the discretion enjoyed by the Director of Public Prosecutions. (10 marks)

(Total marks = 25)

Question 3

A person is arrested without a warrant by police on suspicion that he has committed an offence. He is kept in a holding cell at the Matsapha Police Station for four (4) days without being charged. His father comes to you for legal advice.

Advise him fully.

(25 marks)

Question 4

Write short notes on the following:

(a) Plea of pardon.

(5 marks)

(b) *Nolle Prosequi*.

(5 marks)

(c) Joinder of counts.

(5 marks)

(d) Court's discretion regarding postponement.

(5 marks)

(e) The defence case.

(5 marks)

(Total marks = 25)

Question 5

Discuss the remedies for unlawful search or seizure.

(25 marks)

Question 6

You are instructed by a relative of a person who is in custody on a charge of murder, which it is alleged, was planned. The relative informs you that she would like the accused to be released on bail. She also informs you that the accused was acquitted of the charge he is facing some months ago. Upon taking instructions, you investigate the matter and find that the accused was discharged by a court because the prosecutor never showed up to prosecute the accused on the day of the trial.

Give the relative full legal advice.

(25 marks)