

**UNIVERSITY OF ESWATINI**  
**FACULTY OF SOCIAL SCIENCES**  
**DEPARTMENT OF LAW**

**FINAL EXAMINATION – DECEMBER 2018 (MAIN)**

**COURSE TITLE : CRIMINAL PROCEDURE**

**COURSE CODE : L402**

**TIME ALLOWED : 3 HOURS**

**INSTRUCTIONS : ANSWER ALL QUESTIONS**

**ALL QUESTIONS CARRY EQUAL MARKS**

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## CRIMINAL PROCEDURE EXAMINATION L402

### Question 1

1.1 Judge Dlamini concludes a murder trial by making the following remarks

*"It is the finding of this Court that you have failed to establish extenuating circumstances on a balance of probabilities. In light of this, I am enjoined and required by Section 296 of CPE to sentence you to death by hanging. From here you shall be kept in a place of safety and therefrom hanged by your neck, until you are dead. May the Lord have mercy on your soul".*

Discuss citing authorities whether His Lordship was correct in his approach.  
[10 marks]

1.2 What is a *voire dire*? Discuss the steps that ought to occur in a *voire dire* up to its finality.  
[10 marks]

1.3 On what grounds may a potential witness refuse to be sworn by a judicial officer before giving evidence?  
[5 marks]

### Question 2

2.1 What are the main grounds for a review application and under what circumstances are they applicable?  
[5 marks]

2.2 Preparatory examinations are no longer being used in Swaziland. What procedure is now being used and what are the advantages of such procedure over preparatory examinations?  
[5 marks]

2.3 An accused person refuses to plead to a charge as put to him and the Magistrate sentences him to 8 days in prison until he can plead properly. Is this the correct procedure? State your reasons.

[5 marks]

2.4 The public prosecutor wants to hand in a confession. Outline the steps to taken before it is declared admissible and forms part of the record.

[10 marks]

### QUESTION 3

3.1 Section 95 (8) read with section 96 (4) of the Criminal Procedure and Evidence Act provides that refusal to grant bail and detention of an accused shall be in the interest of justice where one or more of the five grounds are established. State those five grounds and the factors that have to be considered on each ground.

[15 marks]

3.2 Your client has been convicted and sentenced to 10 years imprisonment for rape by the Manzini Magistrate and is desirous of being home by Christmas. Outline steps to be taken and using your own facts draft the necessary papers to carry but the instruction.

[10 marks]

### QUESTION 4

4.1 Outline 5 pleas open to an accused, other than that of not guilty, stating under what circumstances each of these pleas is tenable.

[10 marks]

4.2 Citing legal authority for your proposition state the circumstances under which Section 41 of the CPE is applicable.

[15 marks]