

UNIVERSITY OF ESWATINI  
FACULTY OF SOCIAL SCIENCES  
DEPARTMENT OF LAW  
FINAL EXAMINATION PAPER, DECEMBER 2018

TITLE OF PAPER : CRIMINAL PROCEDURE  
COURSE CODE : LAW 403  
TIME ALLOWED : THREE (3) HOURS  
INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS

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INVIGILATOR.

### QUESTION 1

Silondzi Imvelo, is a Non-Governmental Organization (NGO) whose responsibility is to conserve and protect the environment. The NGO also helps litigate in cases of environmental degradation and where environmental crime is committed. The NGO has its offices in Manzini area in the Manzini region. In October 2017, the residents of kalaMgabhi complained about a company that had set up shop in their area. The residents stated that the company was polluting the water from the only river they had in their area. They also complained about the effluent that the company was emitting into the air. They stated that they now suffered from recurrent respiratory diseases and a variety of cancers all traceable to the pollution of their environment by this company. As with most rural communities, this community was poor and did not have the means to institute proceedings in court, not that they knew this could be done. Having heard about these complaints, Silondzi Imvelo, decided to take up the matter on behalf of the kalaMgabhi community. They approached the High Court for a remedy. Defence Counsel argued that the NGO had no *locus standi* to prosecute in this matter as it did not comply with provisions of the Criminal Procedure and Evidence Act, 1938 and the Constitution as it is only the Directorate of Public Prosecutions who is *dominus litis* in the prosecution of criminal matters. You represent the NGO, first identify the relevant provisions the Defence Counsel is raising and then proceed to fully respond to their argument.

[25 Marks]

### QUESTION 2

Samson Nhleko is charged with murder at the High court of Swaziland. He pleads guilty to the charge of murder. Superman Ngcobo is charged with pickpocketing in the Manzini Magistrate court. He pleads guilty to the charge of pickpocketing. Outline the procedure that must be followed in cases where the accused pleads guilty in the Magistrate's court and in the High court. What is the effect of a plea of guilty in criminal proceedings?

[25 Marks]

### QUESTION 3

Sigcino Mweliso is charged with the offence of murder in that on or about the 18<sup>th</sup> May, 2009, and at or near Mliba, Manzini, she intentionally and unlawfully killed one Sarah Bart, a female aged sixty years. She denies she committed the offence. She instead alleges that it was committed by her identical twin sister who escaped for a neighbouring country soon after the offence. Birth records at the Mliba Clinic confirm that she is a twin and this fact is also common knowledge within her community. The accused is an unsophisticated person who has been kept in custody for almost 7 years now. She has languished in custody simply because the system forgot her. Your attention has been drawn into this case and, as an expert in criminal procedure you agree to help. What will your first action be, if the accused must be assisted to immediately get out of incarceration pending the setting of a trial date?

- i. Draft the necessary papers to help the accused person obtain liberation pending hearing of her trial.

[20 Marks]

- ii. What other remedies, if any, are open to for your client to pursue? Briefly discuss.

[5 Marks]

### QUESTION 4

- (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 5

Write short notes on the following:

- (a) Review. [5 Marks]
- (b) *Nolle Prosequi*. [5 Marks]
- (c) Joinder of counts. [5 Marks]
- (d) Alteration of judgment. [5 Marks]
- (e) Arrest. [5 Marks]

[Total marks = 25]