



**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
DIPLOMA IN LAW  
FINAL EXAMINATION PAPER NOVEMBER 2019**

TITLE OF PAPER : CRIMINAL PROCEDURE  
COURSE CODE : IDE LAW403  
TIME ALLOWED : THREE (3) HOURS  
TOTAL MARKS : 100  
INSTRUCTIONS : ANSWER QUESTIONS 1 and 2  
WHICH ARE COMPULSORY

And

TWO ADDITIONAL QUESTIONS  
FROM QUESTION 3 to 6

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION TO DO SO HAS BEEN GRANTED BY THE INVIGILATOR.

## QUESTION 1

- a) After the close of the crown's case and when the accused has been called to his/her defence, certain rights accruing to the accused take effect. State and discuss what these rights are and, in detail, discuss the weight attached to each of the rights.

(10 marks)

- b) During re-examination of a crown witness, to which evidence should such re-examination be confined and what line of questioning may be followed?

(2 marks)

- c) In terms of section 174(4) of the Criminal Procedure & Evidence Act 67/1938, under what circumstances may the court acquit or discharge an accused person?

(4 marks)

- d) Render a detailed discussion of the rights of an accused person to cross examine crown witnesses and the weight thereof.

(6 marks)

- e) What important role is played by the following participants in relation to criminal proceedings:

- (i) prosecutor
- (ii) judicial officer
- (iii) police

(3 marks)

## QUESTION 2

Drawing from the South African case of ***Attorney-General v Additional Magistrate, Middledrift and Others [1987] 4 All SA 233 (Ck)***, critically analyse the provisions of section 6 of the Criminal Procedure and Evidence Act 67/1938 in relation to the withdrawal of charges and the abandonment of prosecution.

(25 marks)

## QUESTION 3

### PART A

What effect does the withdrawal of charges by the crown have which differs from that instituted at the instance of the complainant during criminal proceedings?

(5 marks)

## PART B

Briefly explain the following concepts:

- a) Private prosecution;
- b) Abandonment of a prosecution;
- c) Bail;
- d) Reasonable grounds for suspecting;

(20 marks)

### QUESTION 4

- a) What does the term "Appeal" mean? Explain and give examples of Court with appellant jurisdiction. (6 marks)
- b) What does the term "review" mean? (4 marks)
- c) In short notes, explain the following
  - i) *Lis pendens* (3 marks)
  - ii) *Locus standi* (3 marks)
  - iii) *Prima facie* (3 marks)
  - iv) *Bona fide* (3 marks)
  - v) *Nolle prosequi certificate* (3 marks)

### QUESTION 5

- (i) Using fictitious averments, draft the following court process:
  - a) Murder indictment (5 marks)
  - b) Robbery charge sheet (5 marks)
  - c) Assault with intent to cause grievous bodily harm charge sheet (5 marks)
  - d) Theft by false pretences charge sheet (5 marks)
- (ii) State the importance of a search warrant and list all the important information that must be contained therein. (5 marks)

### QUESTION 6

- (i) Section 96(4) of the Criminal Procedure and Evidence Act 67 of 1938 warrants the refusal to grant bail and authorises the court to order the detention in custody of an accused person where in so doing the interests of justice are concerned. Mention the five instances in respect of which this provision refers.

(10 marks)

- (ii) In considering whether the ground in subsection 96(4)(b) has been established, list 5 of the 10 factors the court must take into consideration. (5 marks)
- (iii) In considering whether the ground in subsection 96(4)(e) has been established, list 5 of the 6 factors the court must take into consideration. (5 marks)
- (iv) In considering whether the ground in subsection 96(4)(c) has been established, list 5 of the 8 factors the court must take into consideration. (5 marks)