



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW402/L403

TITLE OF PAPER: CRIMINAL PROCEDURE

TIME ALLOWED: 3 HOURS

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## Instructions

Answer any 4 (four) questions  
Each question carries a total of 25marks.

## Special Requirements

None

## Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT** turn examination paper over until instructed to do so.

## CRIMINALPROCEDURE EXAMINATION 2019 – L402

### QUESTION 1

Before you as a Magistrate for the Manzini District is Mxolisi Ndwandwe, a 56 year old illiterate Swazi male charged with the offence of assault with intent to do grievous bodily harm. The prosecution has called all its witnesses and closed its case.

- 1.1 How does the case proceed from now on? [10]
- 1.2 Discuss 5 of the available pleas to an accused person? [15]

### QUESTION 2

Themba Magagula is charged with the offence of contravening the Sexual Offences and Domestic Violence Act. He is brought to Manzini police station for detention. Whilst the police are attending a new complaint, he dashes across the street and is then pursued by the detectives who then shoot him down when they find him at the bus rank. Detective Dlamini who fired the lethal shot is charged with murder.

- 2.1 Discuss the availability or otherwise of Section 41 of CPE as a defence? [15]
- 2.2 Preparatory examinations are now obsolete. Discuss the procedure that has now been adopted instead of preparatory examinations in Eswatini. [10]

### QUESTION 3

When a Court deals with extenuating circumstances and is no longer dealing with the issue of guilt but moral blameworthiness of the accused.

- 3.1 Is this the correct legal proposition? Discuss what circumstances could serve as extenuation. [15]

3.2 A person who is charged with Schedule Five offence is obligated by law to show more than what is required from a person charged under Schedule Four of the CPE, if he is to be successful in a bail application.

Discuss the difference.

[10]

#### **QUESTION 4**

Section 145 of the CPE is a violation on the right to bail as guaranteed by the Constitution Act 2005.

4.1 In what way is this Section constitutionally offensive? [10]

4.2 What requirements have to be met before a private prosecution is instituted? [5]

4.3 Our jurisprudence has formulated tests to enable Court to discern whether charges have been duplicated. Discuss. [10]

#### **QUESTION 5**

In our law appeals and reviews are in no way different; both constitute an approach to a superior Court by a disgruntled person.

5.1 Is this take correct position? [15]

5.2 An appeal on sentence is never available to a convicted person because sentence is at the discretion of the trial Court. Discuss the correctness of this statement? [10]