



**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
DIPLOMA IN LAW  
FINAL EXAMINATION PAPER APRIL 2021**

**TITLE OF PAPER : CRIMINAL PROCEDURE**

**COURSE CODE : IDE-LAW 403**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS –QUESTION  
1 BEING COMPULSORY, SELECT 3 OTHERS  
QUESTIONS FROM QUESTION 2-5**

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BY THE INVIGILATOR**

## Question 1

(a) *“In deciding whether a confession or admission was obtained as a result of undue influence, the test is not whether there was in reality no act of free will at all. The criterion is the improper bending, influencing or swaying of the will, not its total elimination as a freely operating entity. The whole object of the enquiry is to evaluate the freedom of volition of an accused and this of its very nature is an essentially subjective enquiry. It is his will as it actually operated and was affected by outside influences that is the concern.”*

(Per Williamson J. in the case of **S V Mpetha and Others (2) 1983 (1) SA 576 (C)**. Render a brief discussion of what the above statement entails.

10 marks

(b) The *nemo iudex in causa sua* principle dictates that in the event such principle is ignored, the resultant effect is that an accused is denied the enjoyment of his rights as couched under the principle of natural justice. Having briefly discussed the two principles as above-stated, citing relevant authorities, discuss when a judicial officer may recuse him/herself.

15 marks

**(25 Marks)**

## Question 2

Mrs Malindzisa's house was broken into on the 17<sup>th</sup> January, 2018 and items valued at E45 700.00 taken at gun point by two robbers. At around 23:30 hrs, a mere 30 minutes prior to the return of Mr. Malindzisa from his night shift, two men had entered the house through the kitchen door adjoining the garage after having stolen equipment from there valued at E15,000.00. Having loaded such equipment onto a getaway car parked by the Malindzisa home, the gunmen proceeded to enter the house, one

pointing a gun at Mrs Malindzisa who then led them to a safe in her bedroom, the other loaded all the money amounting to E32 000.00 and valuables including a family heirloom valued at E8000.00 and diamond earrings bought by Mr. Malindzisa for his wife for their anniversary, same valued at E5700.00; all of which collectively amounted to E45 700.00.

Around January 2020 the matter has still not been prosecuted and the Malindzisa family have since discovered that one of the suspects is the DPP's nephew who happens to be a suspect in respect of a string of robberies dating as far back as 2014, all of which have never seen the light of day in court. Upon further enquiry, the Malindzisa's discover that the DPP declined to prosecute in their matter.

Basing your discussions on sections 3, 6 10, 11 and 13 of the Criminal Procedure and Evidence Act 67/1938 (AS AMENDED), answer the following questions;

- (a) Why were the items valued at E15 000.00 stolen from the garage not included in the robbery charge? 5 marks
- (b) In detail and citing requisite authority, discuss the remedy available to Mr. Malindzisa as regards the prosecution of the suspects? 10 marks
- (c) The provisions of section 6, coupled with 10 and 13 of the Criminal Procedure and Evidence Act 67/1938 have the capability of creating a negative impact when considering the liberty with which the office of the DPP may exercise its power. Critically discuss? 15 marks

**(25 marks)**

### **Question 3**

Render a detailed discussion of the following:

(a) The rights of an unrepresented accused person at the commencement of trial or at his/her first court appearance and at the close of the Crown's case.

10 marks

(b) The presumption of innocence .

2 marks

(c) Doctrine of effectiveness

3 marks

(d) The burden and standard of proof in criminal proceedings in relation to the accused person's right to remain silent.

10 marks

**(25 marks)**

#### **Question 4**

(a) Hlomizikhali Mandlazi is spotted by Detective Phil Manyatsi at Cozy Corner bar at 17:00hrs and without a warrant, Madlazi is arrested and taken to Manzini police station. From Mbabane, the police van ferrying the suspect is driven via Lobamba police station from where Manyatsi picks up Temacala Makwakwa who is handed over to him by Detective Constable Manyovu. When handing over Makwakwa, Manyovu informs Manyatsi that Makwakwa has already been formally charged for Armed Robbery.

Upon arrival at Manzini police station at around 19:00hrs, Manyatsi receives a call from a police informant advising him of the whereabouts of the 2 other suspects who were still at large in connection with the robbery. Immediately, Manyatsi puts Mandlazi and Makwakwa in a police cell and rushes off to effect an arrest on the two last suspects who are said to be at Makholweni area.

Upon his return at 23:00hrs with the two suspects from Makholweni, Manyatsi is informed that Mandlazi and Makwakwa had managed to

escape whilst another officer was putting other detainees into the police cell in which the suspects were being held.

Having captured the escapees the next day, Manyatsi proceeds to prefer two charges against Mandlazi and Makwakwa , one of which is the charge of escaping from lawful custody.

Drawing reference from the provisions of section 30(4) of the Criminal Procedure and Evidence Act and the facts and decision rendered in the case of **S v Ngidi**, discuss the possible verdict the court may render in respect of each of the two accused persons for this charge.

15 marks

- (b) It is always desirable that a warrant should be secured in every case where the liberty of a person is to be infringed, unless there are reasons which justify summary arrest. Discuss what an application for a warrant in terms of section 31(1) of the Criminal Procedure and Evidence Act must include?

10 marks

**(25 marks)**

### **Question 5**

- (a) An accused person may raise the pleas *Autrefois convict* or *Autrefois acquit*. Discuss the three requirements for each of these pleas.

15 marks

- (b) Mention five pleas which may be entered by an accused person in terms of section 155 of the Criminal Procedure and Evidence Act 67/1938 (AS AMENDED).

10 marks

**(25 marks)**

The End!