

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANTANCE EDUCATION

DIPLOMA IN LAW

MAIN EXAMINATION PAPER 2016

TITLE OF PAPER : CRIMINAL PROCEDURE

COURSE CODE : DL014

TIME ALLOWED : THREE (3) HOURS

TOTAL MARKS : 100

**INSTRUCTIONS : ANSWER QUESTION 1 WHICH IS COMPULSORY AND THREE
ADDITIONAL QUESTIONS FROM QUESTION 2 TO 6**

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

Question 1

Mr Mavundla is employed by SWADE. He is married and has six children two of them are girls aged six and twelve. Mr Mavundla has a cousin who resides in the United Kingdom permanently. The family was leading a happy life.

On the 2nd February 2016 was invited by his friend to drink marula as it was marula season. He got very drunk such that he got home at around 2 a.m. and his wife was very surprised to see her husband in that state. When she asked him why he was so drunk a quarrel ensued and they fought. During the fight his wife over powered him as he was very drunk and he took a knife and stabbed his wife next to her breast and she died on the spot.

Mr Mavundla then went to one of the rooms where his two daughters were sleeping and ordered them to undress themselves and he had sexual intercourse with them. He was subsequently arrested and charged with murder, incest and rape. During his first court appearance he indicated that he would plead guilty to all the charges and the Magistrate ordered that a trial date be set to afford the accused a speedy trial as per the provisions in the Constitution Act of 2005.

While the prosecutor was busy preparing for the trial he became aware that Mr. Mavundla was once arrested and charged with a crime of rape. The prosecutor added this charge to the charges above not knowing that Mr. Mavundla was tried and acquitted on the charge of rape. However, due to ignorance during the trial he told the court that he was also pleading guilty to the charge of rape (latter). However, Mr. Mavundla wanted to be released on bail while his trial was going on.

- (a) Mr Mavundla's relatives approach you for advice. Advise them about all the legal issues that arise from the above scenarios. (10)
- (b) In view of the provision of Section 96(4) will Mr Mavundla succeed in his application to be released on bail? Give reasons for your answer. (15)

QUESTION 2

On the 6th February 2016 Mr. Khoza who was working in Ministry of Home Affairs went to Molife Bar at around 1830 hrs to have few drinks as it was a Friday. While he was still enjoying his drinks a man came and sit next to Mr. Khoza and had a few talks with him. After a while the man took Mr. Khoza's beer and drank it without his permission. When Mr. Khoza asked as to why man was drinking the beer without his permission the man simple told him that he did not need any permission as they were now friends and they should share the beer. Mr. Khoza became angry he took an empty beer bottle, broke it and stabbed the man several times. The man was rushed to RFM Hospital where he was certified dead by a doctor.

- (a) You are a Crown Counsel at the Director of Public Prosecutions Chambers who has been allocated with the docket. Draft an indictment that you will lodge to the Registrar of the High Court. (5)
 - (b) What does Section 122 (1) of the Criminal Procedure and Evidence Act provide? (4)
 - (c) If you as a prosecuting counsel decline to prosecute Mr. Khoza, is there any remedy available to the next of kin of the deceased? (4)
 - (d) What does Section 154 of the Criminal Procedure and Evidence Act provide? (4)
 - (e) When can the accused object to the charges? (4)
 - (f) What does Section 174 (4) of the Criminal Procedure and Evidence Act provide? (4)
- [25]**

QUESTION 3

- (a) What is bail and its purpose? (10)
 - (b) List some of the factors that may entitle the court to refuse granting an accused bail as per Section 96(4) of the Criminal procedure and Evidence Act No 67 of 1938. (10)
 - (c) What factors the court considers when one applies for bail pending appeal? (5)
- [25]**

QUESTION 4

Discuss the three procedural rights of an accused in a criminal trial. (15)

What should happen in a case where the accused was not given an opportunity to address the court at the end of the evidence given? (5)

Is there a prescribed number of witnesses a prosecutor should call. If so, how many? (5)
[25]

QUESTION 5

- (a) Write short notes on the role of each party in the criminal justice system. (15)
(b) What is meant by the independence of the DPP? (10)
[25]

QUESTION 6

- (a) What is meant by the term "jurisdiction" in our criminal justice system? (9)
(b) Outline criminal jurisdiction of courts in Swaziland. (8)
(c) What meant by extradition? (8)
[25]