

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2005**

TITLE OF PAPER : CRIMINAL LAW
COURSE CODE : L 202
TIME ALLOWED : THREE (3) HOURS
**INSTRUCTIONS : ANSWER ANY FOUR (4)
QUESTIONS.
ALL QUESTIONS CARRY
EQUAL MARKS.**

**THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

Question 1

“Where *mens rea* is an element of the crime charged, *actus reus* and *mens rea* must be contemporaneous.”

With the aid of relevant decided cases, **critically** discuss this principle of the criminal law.

(25 marks)

Question 2

Ndlovu and Manzini went into a shebeen and were waiting to be served. Fikile, Ndlovu’s girlfriend, came into the shebeen, gave a note to Manzini and hurriedly went out. Unknown to Manzini, Ndlovu who had been suspecting the two of having an affair, had witnessed the incident.

Ndlovu quickly dashed out and asked Fikile what was going on, but she simply laughed and ran away. Ndlovu then went back into the shebeen and inquired from Manzini what was going on but the latter simply folded the note, put it into his pocket and tried to go away. Ndlovu hit him on the shoulder with a bottle of beer. Manzini then pulled out from his pocket a short metal bar, which in the dim light, looked like a gun. Ndlovu reacted quickly and hit Manzini again on the head with the beer bottle. Manzini fell down unconscious and was rushed to the hospital where he was pronounced dead from a fractured skull.

Ndlovu is charged with the murder of Manzini. Will he be convicted?

(25 marks)

Question 3

“In order that an act should be punishable it must be morally blameworthy. It must be a sin” (Denning L.J; **The Changing Law.**)

Do you agree?

(25 marks)

Question 4

(a) What do you understand by **the principle of legality**? To what extent is it protected under the criminal law of Swaziland?

(15 marks)

(b) The Zulu Kaya Lami (Pty) Ltd is a private company, which cultivates and sells farm products in Mbabane. In a bid to expand its operational base and compete in the SADC region, the company sent its Senior Manager, Ambrose Masuku to Sweden in June 1998 to learn the latest in farming

technology. In Sweden, Masuku was introduced to genetic engineering, a form of biotechnology in which the genes of an organism are deliberately altered by a method other than conventional breeding in order to change one or more of its characteristics. On his return to Swaziland in June 1999, his company flooded the food market with maize flour (**mealie meal**) made from genetically modified maize. The result was a huge economic bonanza for the company.

The economic success of Zulu Kaya Lami has earned the enmity of some powerful rivals. These rivals managed to convince the Minister of Agriculture that genetically modified crops are unsafe for human consumption. In July 2000, Parliament passed a law making it a crime to sell genetically modified food in Swaziland. Zulu Kaya Lami and Ambrose Masuku are charged with contravening the new statute. The prosecution's case against the accused is supported by many sales records taken from the company in respect of its marketing activities between June 1999 and July 2000.

Advise Zulu Kaya Lami and Ambrose Masuku

(10 marks)

[Total: 25 marks]

Question 5

With the aid of **relevant decided cases and illustrations**, discuss critically the differences between the three property offences of **Theft, Fraud and Theft by false pretences**. To what extent is it correct to say that "all cases of false pretences are cases of fraud, but not all cases of fraud may qualify as cases of theft by false pretences?" (25 marks)

Question 6

(a) What contribution does the case of *Amalgamated Beverage Industries Natal (Pty) Ltd. v Durban City Council* 1994 (1) SACLR 373 (A) in your opinion, make to our criminal law? (10 marks)

(b) D watches C, a child from the same homestead fall into a river. D could have saved the child without any injury to himself, but he refrains

from saving C saying “why should I bother to save this child who always disturbs me in my sleep with her loud cries? In any case, she is in no way related to me”

The child drowns.

Is D guilty of any offence?

(7 marks)

(c) Briefly discuss **the age of criminal responsibility** in Swaziland.

(8 marks)

(Total 25 marks)

Question 7

(a) When can a defendant, charged with attempt to commit a crime rely on the defense of:-

(i) Factual impossibility?

(5 marks)

(ii) Legal impossibility?

(5 marks)

(b) Simon Mamba and Davies are neighbours. Mamba, who hates Davies because the latter is a more successful legal practitioner than he is, decides to teach him a lesson. Late one night, armed with a can of petrol, a tin of candle grease, a candle, a box of matches and some old newspapers, he went to the private legal chambers of Davies. After liberally pouring petrol all over the floor, the furniture and books in the office, he soaked the newspapers in petrol and pushed them under the door of the inner office. At this point a police officer, who has all along been watching him, arrested him.

What offence has he committed?

(15 marks)

[Total marks 25]

Question 8

Sipho, Dube and Londiwe are undergraduates at UNISWA. Both Sipho and Dube love Londiwe but she is only interested in Dube. One night at the Why Not Club, Sipho, who knows that Dube tends to be highly irrational and violent when intoxicated, secretly doctors Dube's coca cola with a liberal dose of brandy while Dube is on the dance-floor dancing with Londiwe. Dube returns from the dance-floor hot and thirsty and swallows the drink in one gulp. Dube becomes very intoxicated and picks a quarrel with Sipho. He strikes Sipho with a chair and Sipho dies.

Has Dube committed any offence?

(15 marks)

(b) Vilakati, a 36 year old farmer, has been a heavy drinker since he turned 16. Last week he attended the wake-keeping ceremony of his friend Gwebu, who died because of liver cirrhosis due to excessive alcoholic intake. At the wake-keeping, Vilakati consumed so much alcohol that he became temporarily insane.

In this stage, he hit Matthew, another mourner, on the head thinking that he was crushing a water melon. Mathew fell down and died instantly.

Vilakati is charged with murder.

Advise him.

(10 marks)

[Total marks 25]