

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW  
SUPPLEMENTARY 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

Roger Twala the jealous husband of Lindiwe decides to kill her because he suspects her of extra-marital affairs. He seeks advice from his childhood friend Martin Cash who advises him to kill her by giving her a poisoned apple. Unknown to Roger and Martin, the plot to kill Lindiwe had been overheard by Paula, a Mozambican servant employed by Mrs Cash. Paula reveals the plot to her mistress and intimates to her that she would warn Lindiwe about the plot to kill her. Mrs Cash who was apprehensive that her husband would be arrested by the police if Paula let the cat out of the bag to Lindiwe, locked Paula up in her room the whole day.

Meanwhile, Martin Cash procured a poisoned apple for his friend, Roger. Roger went home and gave the apple to his wife, Lindiwe in the presence of their four year old daughter, Palisa. Lindiwe gave the apple to Palisa in the presence of her loving father, Roger Twala, who could not stop her from eating it, because he was afraid of being suspected. After eating the poisoned apple, Palisa falls down and dies. Roger, who is now totally heartbroken, takes a pillow and strangles Lindiwe. Roger Twala, Martin Cash and Mrs. Cash are charged with the murder of Lindiwe and Palisa. Advise them.

### Question 2

With the aid of decided cases and/illustrations, critically distinguish between the offences of murder and culpable homicide under our law. Under what circumstances may homicide committed in self defence exculpate from criminal liability?

[25 marks]

### Question 3

“The purpose of criminal punishment should be the rehabilitation of the criminal and nothing else.”

Do you agree?

[25 marks]

### Question 4

The maxim “*actus non facit reum nisi mens sit rea*” is said to be the ethical foundation of a rational Criminal justice system. To what extent does the Criminal Law of Swaziland recognize this maxim? How does one reconcile this maxim with offences of strict liability?

[25 marks]

### QUESTION 5

Although most people today accept the proposition that morality is a necessary condition of criminal, very few will accept the alternative view that it is a sufficient condition of criminality. Do you agree?

[25 marks)

### QUESTION 6

(a) To what extent, if at all, does the Criminal Law of Swaziland, recognize the defense of “irresistible impulse” (i.e. the inability of the insanity defendant to control his/her actions)?

[10 marks)

(b) D kills V under the insane delusion that X is wearing the school tie of St. Mark. At his trial for murder he said he knew that he was killing a human being. He added “I know that government said we should not kill other human beings. I know other people will not understand, but God told me that all the students of St.. Mark’s are drug addicts and devil worshippers. God appointed me personally as his avenging Angel and commanded me to visit his retribution on these Satanists. All the policemen in Swaziland cannot stop me. God is mightier than all of them”. The case has come before you in the High Court of Swaziland. How will you decide it?

[15 marks]

[Total marks 25]

### Question 7(a)

“The two major property offences, theft and theft by false pretences although functionally related, are aimed at two different acquisitive techniques”.

With the aid of decided cases and/or illustrations, carefully differentiate between these two offences under our law. What socio-economic functions are these two offences designed to serve?

(10 marks)

(b) Discuss the criminal liability of Prince Msibi in the following cases:

- (i) Prince Msibi, an employee of the Water Board represented to the Swaziland Supply (pty) Ltd that he was purchasing a refrigerator on behalf of the Water Board and on the Board’s account when, in fact, he was getting the refrigerator for himself

(4 marks)

(ii) Prince Msibi broke into a store in which his neighbour had stored bags of dagga. He stole some of the dagga and also killed a beast belonging to his neighbour. He took the dead animal home to his wife who cooked it for the family

(5 marks)

(iii) Prince Msibi took a car belonging to his employer, Mr Shongwe, without the knowledge of the latter to carry passengers from Manzini to Big Bend. He charged the passengers E150 and pocketed the money. Before the trip to Big Bend he had taken E25, the property of Mrs. Shongwe for the purpose of buying a present for Linda, his girlfriend. It was his intention to replace the E25 as soon as he came back from Big Bend

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