

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2006**

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

The maxim, "*actus non facit reum nisi mens sit rea*", is said to be the ethical foundation of a rational criminal justice system. With the aid of decided cases and illustrations, discuss whether or not the criminal law of Swaziland recognises this maxim. How does one reconcile this maxim with offences of strict liability?

[25 marks]

Question 2

(a) With the aid of decided cases and illustrations, differentiate between *dolus indirectus* and *dolus eventualis*. (10 marks)

(b) "Where the crime in question requires *mens rea* in the form of intention, it is sufficient for the prosecution to prove *dolus eventualis*." Explain. (5 marks)

(c) A, who hates his neighbour B because he suspects that B has designs on his beautiful young wife, plans to kill him. One day the two neighbours go out hunting at night. When they got to the forest they separated to look for wild animals. A makes his way to a spring which he knows is a favourite haunt for bush pigs. At the spring, he hears a splash and a grunt and fires his gun at an object in the water, believing that he was shooting at a bush pig. The object turns out to be B, who appears to be dead. A, who is happy that B is dead throws the body into the spring. B did not die from the bullet wound, but drowns.

What is the criminal liability of A? (10 marks)

[Total marks 25]

Question 3

(a) What, in your opinion, are the crucial differences between the defences of insanity and automatism? (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. Marks 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 4

Sipho struck Khotso a moderate blow on the temple with his fist in the course of a heated argument. The blow to the Khotso's head caused him to lose consciousness. He was rushed to the hospital where he was admitted. Two hours later, he recovered consciousness. Dr. Nomcebo examined him carefully and proclaimed that although Khotso's injuries were not serious, he was to remain confined to bed for a week for the purposes of rest and medical observation. Khotso, who did not have money to pay for a week's stay in the hospital, discharged himself, against medical advice. The next morning, Khotso woke up from his bed at home, feeling hale and hearty. As it was planting season he decided to go and work on his farm. He had been working in the farm for about one hour when he felt a sharp pain in his chest and collapsed. Some hours later, an ambulance was arranged to take him back to the hospital. He never reached the hospital alive.

The pathologist who carried out the post-mortem examination stated the cause of death as "subdural haematoma" [i.e. accumulation of blood in the brain in the space between the dura matter and arachnoid that clots to form a solid swelling]. The accumulation of blood in Khotso's brain was caused by the bursting of one of Khotso's "unusually thin" cerebral vessels when he was struck by Sipho on the temple. Dr. Nomcebo was of the opinion that if Khotso had remained in hospital as advised when he was first admitted, the injury to his brain would have been detected and corrected by appropriate medical procedure.

Sipho is charged with the murder of Khotso. What are his chances at the trial?

[25 marks]

Question 5

(a) With the aid of decided cases and illustrations, critically discuss the requirement that for the provocation defense to succeed under our law, the provocation must be such as would deprive "an ordinary person" of the power of self-control. Who is "an ordinary person" in this context?

[10 marks]

(b) Siphon Vilakati and Lindiwe, his girlfriend, went to the Why Not Disco for a party. Siphon who had been drinking an inordinate amount of coca cola started experiencing stomach cramps and had to go to the toilet. When he came back, he saw Romeo, an old flame of Linda's, passionately kissing Linda on the dance-floor. In a fit of anger, Siphon grabbed a bottle, broke it into two, and stabbed Romeo five times with it. At this point, Gugu, Romeo's girlfriend, tried to intervene, and Siphon stabbed her in the stomach.

Romeo and Gugu are rushed to the hospital where they are pronounced dead.

Siphon Vilakati is charged with the murder of Romeo and Gugu and pleads provocation. Will the defense of provocation succeed?

(15 marks)

[Total marks 25]

Question 6

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. Lindiwe gave the apple to their four year old daughter, 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.

[25 marks]

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. (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. (6 marks)

[Total Marks]

Question 8

- (a) Briefly comment on the age of criminal responsibility in Swaziland. (8 marks)
- (b) 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? (8 marks)
- (c) Give a *brief summary of the essential facts* of the famous English case, *Woolmington v DPP*. What is the *ratio decidendi* of this *locus classicus* of the allocation of the burden of proof in criminal cases? (9 marks)

[Total marks 25]