

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
SUPPLEMENTARY 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 growth of our criminal law has been largely fortuitous if not totally the result of serendipity. Its form is a combination of uncoordinated statutes and Roman-Dutch common law that only history can explain.”

Is this an accurate indictment of the history and sources of the criminal law of Swaziland?

[25 marks]

Question 2

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

[25 marks]

Question 3

With the aid of decided cases and illustrations, critically discuss the rationales and limitations of provocation as a defense to criminal liability in Swaziland.

[25 marks]

Question 4

John Masuku, a rich businessman at Big Bend has learnt that his business rival Sipho Vilakati had E100, 000.00 in cash in his hand in Mbabane. The information was passed on to him by his niece, Mary, whom he had planted as a spy in the Vilakati home.

As far as Sipho Vilakati was concerned, Mary was just a hard-working servant whose services he valued immensely. John Masuku recruited three thugs, Bozo, Hardcase, and Ironhead to go and rob Vilakati. He supplied them with a gun, a get-away car as well as a master key to open the safe in which the E100, 000.00 was kept. Mary was to leave one of the windows in Vilakati’s house open so as to facilitate entry for the robbers. Before the gang set off on their “nocturnal expedition”, John Masuku warned them not to use violence. He stressed repeatedly that the gun was only to be used to frighten away any person they might find in the house. The plan was that Bozo would remain on the street keeping watch and keeping the get-way car running. Hardcase and Ironhead were to go into house and take the money. When Hardcase and Ironhead got to Vilakati’s house, they found that someone had left the kitchen door open, so they did not have to use the window that Mary had, pursuant to the original plan, left open. Hardcase and Ironhead succeeded in taking the money from the safe. Intending to make a quick

exit after their surprisingly easy *coup*, they headed again to the kitchen door. However before they could get to the door someone pushed the door open from outside. It was Sonia, the beautiful 19 year old daughter of Siphon Vilakati who had slipped out on a date with her boyfriend and had left the kitchen door open so as not to arouse any suspicion from her father when she came back late from her date. At this point, Hardcase, who was carrying the gun panicked and fired a shot at her. The shot however missed her and struck Bozo as he was coming to warn them that someone was coming into the house. Bozo died on the spot.

John Masuku, Mary, Hardcase and Ironhead are now charged with murder, attempted murder and theft.

You are the defense counsel. Advise them.

[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) When, if at all, can an accused under our law rely on the defence of:

- (i) physical impossibility
 - (ii) legal impossibility
- to a charge of attempt to commit a crime?

[10 marks]

(b) A and B are brothers. A, who hates B because the latter is the designated heir to the vast family sugar fortune decides to do away with B. On B's birthday, A sends him a bottle of brandy into which he has dumped a quantity of arsenic. At B's birthday party that night, B opens the bottle of brandy and pours for himself a glass of the poisoned drink. Before he could drink the brandy, C, his fiancée who does not like B to drink, snatches the glass from B's hand and pours the drink into the toilet. At this point, the police who have all along been following A, step in and arrest him.

What crime has A committed?

Would it make any difference if it were A himself who had a change of heart and had snatched the glass of brandy from his brother when B was about to drink it [15 marks]

[Total marks 25]

Question 7

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 drunk 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 Mattew, another mourner on the head thinking that he was crushing a water melon. He is charged with murder.

Advise him.

[10 marks]

[Total Marks 25]