

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2007**

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

“Although most people will accept the view that morality is a ‘necessary’ condition of criminality, few would accept the proposition that it is a ‘sufficient’ condition.” Do you agree? [25 marks]

Question 2

What do you understand by the principle of legality? To what extent, if at all, is it protected by the criminal law of Swaziland? [25 marks]

Question 3

(a) What, in your opinion, are the crucial differences between the defences of insanity and automatism? (10 marks)

(b) David Mamba suffers from “Korsakoff’s psychosis”, an organic disorder of the brain caused by chronic alcoholism. This has resulted in a memory defect in which new information fails to be learnt although past events are still recalled. Six months ago the deceased, Henry Kumalo, had stolen a cow from David Mamba’s farm. Henry Kumalo had however paid compensation to him in the form of two cows.

Last night, David Mamba went to a party at which he consumed a large quantity of beer. While returning home from the party, he met Henry Kumalo. He attacked him with his knobkerrie shouting on top of his voice: “You thief! Where is my cow? If you do not deliver the cow to me this very minute I will teach you a lesson you will never forget.”

He hit Kumalo on the head and the latter fell down and died on the spot. David Mamba is charged with murder. You have been retained to defend him. Defend him. (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 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 hematoma” [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 Siphon 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. Siphon is charged with the murder of Khotso. What are his chances of success at the trial? [25 marks]

Question 5

Critically discuss the rationales and limitations of provocation as a defense to criminal liability in Swaziland.

[25 marks]

Question 6

“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 7

(a) D, a Mozambican, was arrested at the Lomahasha border by members of the Royal Swaziland Police Force and brought to Mbabane. After interrogation, he was released and asked to leave Swaziland immediately. As he was making his way back to the Lomahasha border, he was arrested by immigration officers. He is now charged with the statutory offence of being found in Swaziland without a valid entry permit.

Advise Him

(13 marks)

(b) D put cyanide (a deadly poison) into his wife’s drink with the intention to kill her. His wife died after taking the drink. Medical evidence showed that she died of heart failure which was not in any way caused by the poison. D is charged with murder.

Advise him.

(12 marks)

[Total marks 25]

Question 8

What is the criminal liability of D in the following cases?

- (a) D persuades Y to lend him E100 representing that he needs the money for his wife's funeral. D's wife is however alive and well. D loses the money gambling at the Swazi Spa. (8 marks)
- (b) D received 12 head of cattle from V under a sisa agreement. Six months later, W the wife of V, acting under V's authority, asked for the return of the cattle. D refused to hand over the cattle maintaining that he had purchased them. (8 marks)
- (c) D breaks into the house of a local pastor one evening. There he steals a quantity of dagga, which the pastor had stored in his cellar. Additionally, he removes some human skeletons from a shallow grave in the backyard of the pastor's house for "muti". (9marks)

[Total marks 25]