

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER 2008**

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : L202

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER QUESTION ONE WHICH IS COMPULSORY, & ANY THREE QUESTIONS OF YOUR CHOICE. MARKS FOR EACH QUESTION ARE INDICATED IN BRACKETS.

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

Question 1

Per Fictive, the Supreme Court of Swaziland is seized of a case involving the examination of whether execution by lethal injection is a humane method of capital punishment. The suit has been brought by a “death row” inmate, Simon Shabalala, who was convicted and sentenced to death in 1994 by lethal injection for a murder committed in 1992. The suit followed upon, *inter alia*, studies which have shown that this method of execution creates a significant lapse of time between injection and death, occasioning excruciatingly cruel and unusual pain, and calls that it does not comport with a modern criminal justice system.

The Bench is split 4-4 on the issue, and you as Chief Justice have a casting vote to call judgment. Writing for the majority, and with reference to one or more of the theories of criminal punishment, critically examine the propriety of the above form of punishment and render judgment.

(25 Marks)

Question 2

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

(15 Marks)

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

With the aid of relevant case law, critically discuss this principle of criminal law.

(10 Marks)

Total (25 Marks)

Question 3

Steven Dlamini, a business tycoon, has learnt that his business rival, Peter Simelane had E1 million in hard cash stashed in a safe at his home in Coates Valley. He recruited three local thugs, Bravo, Spikiri and Bricks to go and rob Simelane.

He supplied them with a gun, a get-away car, as well as a master key to open the safe in which the money was kept. He had also bribed Maria, Simelane's maid, to leave one of the windows in Simelane's house open to facilitate entry for the robbers.

Before the band set off for their nocturnal expedition, Steven warned them not to use any aggression. He stressed that the gun was only to be used to frighten away any person they might find in the house. The plan was that Bravo would remain on the street keeping the get-away car running. Spikiri and Bricks were to go into the house and take the money.

When Spikiri and Bricks got to the Simelane's house, they found that someone had left the kitchen door open, so they did not have to use the window which Maria had, pursuant to the original plan, left open. Spikiri and Bricks succeeded in taking the money from the safe. Intending to make a quick exit after their surprising easy coup, they headed again for the kitchen door. However, before they could reach the kitchen door, someone pushed the door open from the outside. It was Smangele, the 18 year-old daughter of Simelane who had slipped out on a date with her boyfriend and had been the one who 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, Spikiri, who was carrying the gun panicked and shot her dead.

Steven Dlamini, Bravo, Spikiri, Bricks and Maria are charged with murder, attempted murder and robbery. They have retained you as Counsel. Advise each of the accused as to their potential criminal liability.

(25 Marks)

Question 4

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 the “ordinary man” in this context?

(25 Marks)

Question 5

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

(b) Paul Mavuso 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, Bheki Khoza, had stolen a cow from Paul Mavuso’s farm. Bheki Khoza had however, paid compensation to him in the form of two cows.

Last night, Paul Mavuso went to a party at which he consumed a large quantity of beer. While returning home from the party, he met Bheki Khoza. He attacked him with his knobkerrie shouting at the top of his voice:

“You thief! Where is my cow? If you do not deliver it to me this very minute, I will send you to meet your ancestors in hell!”

He hit Khoza on the head and the latter fell down and died on the spot.

Paul Mavuso is charged with murder. You have been retained to defend him. Defend him.

(15 Marks)

Question 6

Critically examine the scope as well as the rationale and limitations of the defence of Insanity under the criminal law of Swaziland.

(25 Marks)