

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

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : L202

TIME ALLOWED : THREE (3) HOURS

**INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS.
MARKS FOR EACH QUESTION RE
INDICATED IN BRACKETS.**

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

Question 1

John Magagula, is a reclusive farmer who owns a large estate with a variety of livestock. He is charged with the offence of Bestiality (unlawful sexual intercourse with an animal). The evidence submitted by the prosecution in support thereof, is that his distant neighbour, would occasionally hear the seemingly odd and painful cries of a goat in the middle of the night while passing near his farm to get to her ranch. One day, her curiosity got the better of her, and she calls the police who then stage a surprise raid on Magagula's farm. On entering one of the barns, they are shocked to discover John on top of his goat caught up in the throes of passion.

At the trial, his attorney argues, *inter alia*, that the conduct of Magagula posed no threat to, nor injured, any one, and that in any event the goat was his and he could do as he wished with it as the owner.

Referring closely to relevant authorities and/or illustrations, present the arguments of both the prosecution and the defence in this matter. You are required to proceed on the basis of what the law "ought to be."

(25 Marks)

Question 2

Critically discuss the general principle of our criminal law embodied in the latin maxim; "*nullum crimen sine lege, nulla poena sine lege.*"

(25 Marks)

Question 3

Magawula hated Sputnik because he suspected that the latter had designs on his beautiful young wife and planned to kill him. One day the two neighbours went out hunting at

night. When they got into the forest they separated to look for wild animals. Magawula made his way to a spring which he knew was a favourite haunt for bush pigs. At the spring, he heard a splash and a grunt and fired his gun at an object in the water, believing that he was shooting at a bush pig. The object turned out to be Sputnik, who was very "dead". Magawula was happy that Sputnik was dead and threw his body into the spring. Sputnik did not die from the bullet wound, but from drowning.

With reference to the Contemporaneity Rule, discuss the criminal liability of Magawula.

(25 Marks)

Question 4

"Discussions of the Retributive philosophy of punishment tend to be confused because the term is used in so many senses." (Clarkson and Keating: CRIMINAL LAW).

Critically discuss the various senses in which the Retributive theory of punishment has been used. To what extent, if at all, should Retribution be a punishment option in Swaziland?

(25 Marks)

Question 5

Johannes Green and Simon Steyn were neighbours. Green, who hated Steyn because the latter was a more successful attorney than he was, decided to teach him a lesson. Late one night, armed with a can of petrol, a tin of candle grease, a candle, a box of matches and some old newspapers, he went to the private law chambers of Steyn. After liberally pouring petrol all over the floor, the furniture and books in the office, he soaked the newspapers in petrol and pushed them under the office door from the outside. At this point, a police officer who had all along been watching him, arrested him.

What offence, if any, has Green committed?

(25 Marks)

Question 6

Discuss criminal capacity and the age of criminal responsibility in Swaziland.

(25 Marks)