

UNIVERSITY OF SWAZILAND

MAIN EXAMINATION PAPER, MAY 2009

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| TITLE OF PAPER | : | CRIMINAL LAW   |
| COURSE CODE    | : | IDE - DL 022   |
| TIME           | : | THREE (3) HOURS  |
| INSTRUCTIONS   | : | <u>ANSWER QUESTION 1</u><br>AND ANY OTHER THREE<br>(3) QUESTIONS |
| TOTAL MARKS    | : | 100  |

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BEEN GRANTED BY THE INVIGILATOR

### QUESTION 1

Cowboy took Lindiwe a virgin, to his hut, and locked the door. Then wielding a knife and threatening to kill her, he ordered her to lie down. She obeyed and he had sexual intercourse with her. In the course of the sexual intercourse, Cowboy told Lindiwe, who was unfamiliar with bodily matters, that, what he was doing to her was an operation to improve her voice. On a charge of rape, Cowboy argues that he penetrated Lindiwe's anus with his finger only. Alternatively, he argues that even if he had sexual intercourse with her, Lindiwe had consented because she did not struggle or offer any resistance. Medical examination revealed that Lindiwe's hymen was not ruptured, even though Cowboy's semen was found in her underwear.

Discuss all legal issues arising and the liability of Cowboy on a charge of rape.

**[25 MARKS]**

### QUESTION 2

Explain the following statements:

- (a) A person cannot be charged with the theft of a thing that is not capable of being stolen.

**[15 MARKS]**

- (b) The offence of theft continues for as long as the thief holds the property.

**[10 MARKS]**

**[25 MARKS]**

### QUESTION 3

Write notes on the following defences applicable to defamation:

- (a) Privilege [12 MARKS]
  - (b) Fair comment [7 MARKS]
  - (c) Truth/Justification [6 MARKS]
- [25 MARKS]

### QUESTION 4

Fraud is defined as unlawfully making, with intent to defraud, a misrepresentation which causes prejudice or which is potentially prejudicial.

- (a) What is a misrepresentation? Illustrate your answer with examples. [10 MARKS]
- (b) In what situations may silence amount to a misrepresentation? [15 MARKS]

[25 MARKS]

**QUESTION 5**

- (a) X attacked Y with a knife and inflicted severe injury on his right wrist. The doctor advised Y that unless the hand was amputated at the wrist, he would die. Y did not accept the doctor's advice, because he did not want to go through life with one hand. As a result of his failure to listen to the doctor's advice, Y caught tetanus and died.

Discuss the liability of X on a charge of murder.

**[15 MARKS]**

- (b) Zanele was on her way to the shop, carrying a bag containing E100.00, and some clothes. Badboy Khumalo sneaked from behind her and took the money from the bag. Zanele confronted him and demanded her money back. In response Badboy Khumalo assaulted her.

Discuss the liability of Badboy Khumalo on a charge of robbery.

**[10 MARKS]**

**[25 MARKS]**

**QUESTION 6**

Write short notes on the following:

- (a) Assault with intent to do grievous bodily harm.

**[12 MARKS]**

- (b) Abortion

**[13 MARKS]**

**[25 MARKS]**