

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**MAIN EXAMINATION PAPER 2009**

**TITLE OF PAPER : CRIMINAL LAW**

**COURSE CODE : L202**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS : ANSWER QUESTION 1  
WHICH IS COMPULSORY  
AND ANY OTHER 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

Bheki had done some work for the owner of a hotel as the result of which he had a quarrel with the owner, got drunk and set fire to the hotel in revenge. The fire was discovered and put out before any serious damage was caused and none of the ten guests in the hotel at the time was injured. At his trial, he pleaded guilty to the lesser charge of intentionally or recklessly destroying or damaging the property of another. He claimed that he was so drunk at the time that the thought that he might be endangering the lives of the people in the hotel had never crossed his mind.

You are one of a troika of judges at the High Court of Swaziland to decide the criminal liability of Bheki in the above matter, and have been asked to write the majority judgment. Justiciously determine his liability.

(25 Marks)

### Question 2



Fig. 1



Fig. 2



**Fig. 3**

The above pictorials depict the various stages in a state-sponsored execution for an accused individual found guilty of unlawful homicide. Critically comment on these, rendering appropriate reference to one or more relevant theories of criminal punishment under our criminal law.

(25 Marks)

### **Question 3**

Sabelo Mkhwanazi, a 13-year-old school going boy is in a love-hate relationship with his parents, especially his father whom he often despised for forcing him to feed the family dogs and perform other hard chores against his will. At his age, he had started becoming slightly rebellious. One Friday evening, he returns to his parental homestead from school and immediately goes to the main house where his father is lying fast asleep, takes out a "Rambo" knife and begins stabbing his father repeatedly until he dies. His mother, who is in another outer house, hears shouts and screams coming from the main house and rushes to attend to the noise. She is met by Sabelo midway, and she too is summarily stabbed repeatedly until she dies.

After this, Sabelo, rushes to hide his blood-stained school uniform which he had worn during the altercation. He further buries the Rambo knife at a river nearby in the wee hours of the morning. Early, Saturday morning and before the discovery of the two corpses, he leaves for his weekly soccer match at the community sports ground a few

kilometers from his homestead. The police are later called after the discovery of the two corpses and he is arrested and charged with murder. He cooperates with the police and narrating every detail of what happened as well as leading them to the places where he had hidden the murder items. The community is shocked at the occurrence and conduct of Sabelo, whom they describe as a reserved and likeable teenager, yet relatively naughty.

Holding all other variables constant, and with these facts in mind, critically examine with the aid of the decisional law, the age of criminal responsibility in Swaziland.

(25 Marks)

#### **Question 4**

Critically examine the scope as well as the rationale AND limitations of the defence of intoxication under the criminal law of Swaziland.

(25 Marks)

#### **Question 5**

Discuss the criminal liabilities of Spaza and Zaza in the following cases;

- a) The defendant, Mrs Spaza, was infatuated with her attorney. She was charged with the murder of a woman who was having an affair with her attorney. She had instructed one, Zaza to commit the murder. He pleaded guilty to the murder but said in evidence that up to the point when he went berserk and killed the woman, he had come to a decision not to go through with the plan. The defendant appealed against her conviction for murder.

(10 Marks)

- b) The two appellants, Spaza and Zaza, were involved with others in torturing, kicking, punching and sexually abusing a man. The man was then strangled to death by one of the others. These events were then repeated on a second occasion,

but this time it was Spaza and Zaza who themselves killed the victim by strangling him with a shoelace. They protested, on a charge of murder (and subsequent conviction), and claimed in defence that they acted under duress and the orders of, and through the fear of, one Murray whom the trial judge described as "powerful, sadistic, violent and the dominant figure". They appealed this conviction.

(15 Marks)

Total

(25 Marks)

### Question 6

Bongani, a married man, had an affair with a woman who then started a relationship with another man, Bricks. When she refused to resume their association, Bongani applied for a shotgun certificate and three days later bought some guns. He shortened the barrel of one of the them and test fired it twice. Three days later he told his wife that he was going to Namibia to work on their holiday chalet and left home dressed normally for work. He then changed into a disguise of overalls and a crash helmet with the visor down. He waited outside a school where Bricks dropped his daughter off and then jumped into the rear seat and asked Bricks to drive on. They drove to a grass verge where the appellant took the loaded sawn-off shotgun from a bag and pointed it at Bricks at a range of some 10- 12 inches and said: "you are not going to like this!" The safety catch of the gun was in the on position. Bricks grabbed the end of the gun and after a struggle managed to throw it out of the window and made his escape. Bongani was convicted of attempted murder and appealed.

Discuss the prospects of Bongani's appeal.

(25 Marks)