

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER 2009

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : L202

TIME ALLOWED : THREE (3) HOURS

**INSTRUCTIONS : ANSWER ANY FOUR
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

John Magagula, is a reclusive farmer and who owns a large estate with a variety of livestock, 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 sexual act.

At the trial, his attorney argues, inter alia, that the conduct of Magagula posed no threat 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 on the basis of what the law "ought to be."

(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)

- (b) With the aid of a sterling judicial precedent on point, examine the constitutional implications of the principle.

(10 Marks)

Total (25 Marks)

Question 3

Magawula and Sputnik are neighbours. Magawula hates Sputnik because he suspects that the latter has designs on his beautiful young wife and plans to kill him. One day the two neighbours go out hunting at night. When they got into the forest they separated to look for wild animals. Magawula makes his way to a spring which he knows is a favourite haunt for bush pigs. At the spring, he hears a splash and a grunt and fires his gun at an object in the water, believing that he was shooting at a bush pig. The object turns out to be Sputnik, who was very "dead". Magawula is happy that Sputnik is dead and throws his body into the spring. Sputnik did not die from the bullet wound, but drowns.

Discuss the criminal liability of Magawula.

(25 Marks)

Question 4

Steven Dlamini, 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 to death.

Steven Dlamini, Bravo, Spikiri, Bricks and Maria are charged with murder, attempted murder and robbery. They have retained you as Counsel. Advise them.

(25 Marks)

Question 5

With the aid of decided cases and/or 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)