

UNIVERSITY OF SWAZILAND

MAIN EXAMINATION PAPER, MAY 2010

TITLE OF PAPER	:	CRIMINAL LAW
COURSE CODE	:	IDE – DL022
TIME	:	THREE (3) HOURS
INSTRUCTIONS	:	ANSWER FOUR (4) QUESTIONS
TOTAL MARKS	:	100

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### QUESTION 1

Martin and Donald are friends. Donald is employed as an actuary by an insurance company. Martin is employed as a driver by the local secondary school. One day Martin arrived at Donald's apartment carrying a bag filled with expensive diamond jewelry. Martin emptied the contents of the bag on the carpet in Donald's living room. Donald was excited to see so much beautiful and expensive jewelry. At the request of Martin, he agreed to keep the jewelry in his apartment, while Martin looked for a buyer. The diamond jewelry had in fact been stolen from a jewelry shop in town, and the theft had been widely publicized in the local newspapers, on radio and television. Martin eventually found a prospective buyer, who actually, was an undercover policeman. They arranged to meet at Donald's apartment one Saturday morning, to conclude the sale. When they arrived at the apartment, Donald produced the jewelry. In the course of negotiations over the price, police detectives entered the apartment and arrested Donald and Martin.

Donald has been charged with the offence of receiving stolen property. Discuss his position.

**[25 Marks]**

### QUESTION 2

Write short notes on the following:

a. Crimen injuria **[10 Marks]**

b. Defamation **[15 Marks]**

**[25 Marks]**

### QUESTION 3

Lindiwe, went for studies in the United Kingdom. Before she left for the United Kingdom, she and her childhood sweetheart, Jabulane, married under Swazi Law and Custom. Their marriage turned out to be unhappy and Lindiwe bitterly regretted having married Jabulane. While in the United Kingdom, she met and fell in love with James, an Englishman. They got married under English law. After her studies, Lindiwe returned to Swaziland with her new husband, James. They rented a house in a fashionable part of Mbabane, and settled down to their new life. Jabulane soon learnt of his wife's new marriage. He wants his wife back. James, is adamant that Lindiwe is his lawful wife. His argument is that the marriage between Lindiwe and Jabulane under Swazi Law and Custom is not a valid form of marriage. Lindiwe's argument is that she was entitled to marry James, because her marriage to Jabulane had been miserable.

Discuss all legal issues arising.

[25 Marks]

### QUESTION 4

Mkhatshwa is a Swazi citizen. He went to South Africa where he found a job as a goat herder. About a month ago, he returned to Swaziland on leave, with sixteen goats, which he claimed, were his property, bought in South Africa. He took the goats to his village, Ndwabageni. The South African Police informed their Swaziland counterparts, that Mkhatshwa, had in fact, stolen the goats in South Africa, and requested assistance in apprehending him. Mkhatshwa was arrested at his village by members of the Royal Swaziland Police and charged with the theft of the goats. His argument is that he did not steal the goats and that even if he stole them, he cannot be put on trial in Swaziland for an offence committed in South Africa.

Explain whether Mkhatshwa has committed any offence, and if so, whether he can be put on trial in Swaziland.

[25 Marks]

### QUESTION 5

Dube is an unmarried young man of twenty eight. He fell in love with Dudu, a twenty two year old woman. Unknown to Dube, Dudu had a boyfriend, called Bafana. One Sunday afternoon, Dube and Dudu, went to the local pub to share a bottle of wine. Bafana was informed by a friend that Dube and Dudu were at the pub, so he went there. He approached the two love birds, and asked Dube, "What are you doing with my girlfriend?" Before Dube could answer, Bafana lunged at him, but other patrons at the pub restrained him. Not satisfied, Bafana took a chair and threw it at Dube. The chair missed Dube's head by inches. Bafana then produced a pistol, and threatened to shoot Dube. He pulled the trigger, but the gun did not fire because it had no bullets. Throughout all these events, Dube, a brave person, remained calm, exhibiting no fear.

What offence(s), if any, has Bafana committed? Explain your answer.

**[25 Marks]**

### QUESTION 6

Explain the differences between common law sedition and high treason.

**[25 Marks]**