

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2010

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : L 202

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : 1. THE PAPER CONSISTS OF SIX QUESTIONS.
2. ANSWER ANY FOUR QUESTIONS.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1

“The idea of retribution ... ought in principle to form the backbone of our approach to punishment... The retributive theory is indispensable...”

(Snyman, C R, Criminal Law, p. 23)

Do you agree? Explain.

(25 marks)

QUESTION 2

Sipho and Musa were bitter rivals over one Nomvuyo.

Recently, as Sipho was finishing his second beer at “the Peoples’ Bar”, Manzini, Musa came in. A quarrel ensued. Sipho argued that Musa was ‘despising him with his (Musa’s) eyes’. Musa denied it. A fight then broke out, in which Sipho hit Musa on the head with a knob-kerrie, and the latter fell, bleeding profusely. That injury, as medical evidence later indicated, could have killed Musa within some twenty minutes unless he got treatment.

While Musa was on the floor, one Vusie, another enemy of Musa arrived, and stabbed him in the chest with a long flick-knife. This injury, too, could, by itself have been fatal unless attended to quickly, as medical experts later stated.

However, just then, one Phiri came to the scene, and helped rush Musa to the Nazarene Hospital. There, the tired and overworked doctor, sutured, stitched and dressed the wounds, gave him some medication, then admitted him to the hospital.

Musa died the following morning. The immediate cause of death was what expert medical opinion described as “inept and inadequate medical attention”.

Sipho, Vusie and the doctor have been charged with murder. Advise each of them, referring to authority.

(25 marks)

QUESTION 3

It has been said that the law relating to the defence of insanity in Swaziland is archaic and confusing. Do you agree? Explain.

(25 marks)

QUESTION 4

Although he is a University graduate, Mnisi lives a very bizarre and confused life, maintaining a life-style far beyond his means. This has led him to many debts. One such debt was the E 65,000 he owed to one Zakes. This debt was years overdue for payment. Threatened with court action, Mnisi invited Zakes to his home village and pointed to 15 head of cattle as payment. Unknown to Zakes, the cattle, in fact, belonged to Mnisi's brother, Martin, who is a miner in South Africa.

Zakes said he would collect the cattle within a fortnight, but emphasized that they did not meet the whole debt. Thus, he continued to threaten Mnisi with court action.

Out of desperation, Mnisi then got hold of an advance-pay, ~~CROSSED~~ cheque of E20,000, which he had received at his work place, very neatly deleted the ~~CROSSING~~, and endorsed the cheque, at the back, to Zakes.

Mnisi, however, remained in desperate need of money. Thus a few days later, he arranged with a criminal gang led by one Ceko to visit the same Martin's farm. On the day in question, the said gang arrived at 1 a.m., opened the farm gate with a master key, bundled up the two security guards, took them to a neighbouring forest, and kept them tied up there, while the 15 cows were being loaded onto Martin's trucks found on the premises. The trucks were later abandoned in the Siphofaneni area, after the cattle were disposed of.

Referring to authority, indicate the offences, if any, which have been committed, and by whom.

(25 marks)

QUESTION 5

Referring to illustrations and case law, explain and critically consider the effect of witchcraft on any two defences in the criminal law of Swaziland.

(25 marks)

QUESTION 6

Thirteen-year old Phindile was a very big and tall girl who had dropped out of school due to lack of funds. She stayed with her parents at Ezulwini. In January this year, she attended an interview at "Joyous Bar", Ezulwini, for the position of waitress. The Manager, Bheki, told her plainly: "It's simple. Spend a night with me at the Tums George Hotel. You'd start work the following day!"

Phindile had not "known" a man before, and truly dreaded Bheki's suggestion, but being desperate, she succumbed. Bheki kept his promise. She started work right away.

However, in February, she realized she was pregnant. She accordingly informed Bheki, who said he would marry her under Swazi Law and Custom. Phindile's parents were enthusiastic about it, and asked him for 8 head of cattle as *lobola*, of which he has already given them 2.

The trouble is that Bheki's wife, Zodwa, whom he married in 2005 at Abundant Life Church, Mbabane, has heard about it, and she is very furious. She has hired two well-built men, who follow Phindile wherever she goes. The girl is very frightened.

Discuss the criminal liability of Bheki and Zodwa.

(25 marks)