

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2010

TITLE OF PAPER : **CRIMINAL LAW**

COURSE CODE : **L202**

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

INSTRUCTIONS : **1. THE PAPER CONSISTS OF SIX QUESTIONS.**

2. ANSWER ANY FOUR QUESTIONS

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QUESTION 1

What is meant by the principle of *legality*, and to what extent, if at all, is it upheld in the Criminal Law of Swaziland?

(25 marks)

QUESTION 2

Two young children of Homeboy Maseko, of Lavumisa, had died within two weeks of one another. Shortly thereafter, a third child fell ill. There was evidence that a number of other people had died mysteriously in the area. It was generally believed that Maseko's father, Leonard, an *inyanga*, who practised witch-craft, was the cause of all the deaths.

Indeed, Maseko and the Father had gone to another *inyanga* in Nhlangano to try to find out the reasons for these deaths. They were told that the reason why people were dying in Lavumisa was because the muti of Maseko's father was no longer working correctly. They were further advised that it should be destroyed. The father, however rejected that assessment, and, thus, refused to destroy his muti.

Thus, when Maseko's third child was almost dying, Maseko took a long knife and attacked his father. A brief fight ensued in which he stabbed his father twice on the shoulder, shouting, "I am not attacking you, father! I'm destroying the evil in you!" The father fell down, and was later rushed to hospital where he still is, recovering.

Shortly thereafter, Maseko's sick child was taken to a clinic in South Africa, where he recovered.

Maseko has been charged with attempted murder. Which legal arguments and defences, if any, can be successfully raised in his favour? Explain, referring to authority.

(25 marks)

QUESTION 3

It has been suggested that the court's decision in *Rex v Momo Joseph Sithole*, Cr Case14/2002 (unreported), reeks strongly of *versari in re illicita*. Do you agree? Explain, referring to relevant authority.

(25 marks)

QUESTION 4

A week ago, Ibrahim Ceko, a tall and well-built soldier, paid a visit to his girl-friend, Ruth, in Lavumisa. Unfortunately, he strongly resembled a robber that had escaped arrest a year earlier. When the Chief heard of him, he collected 20 trust-worthy men and instructed them to arrest and bring him to his office for interrogation. He emphasized that no violence should be used.

On the day in question, around 10 p.m., the selected men armed themselves with sticks and proceeded to the shack where Ceko was having a good time with Ruth. They introduced themselves and asked him to accompany them to the Chief's office. He refused.

They tried to take him by force, but he turned out to be too strong for them. Indeed, in the ensuing scuffle, he beat them up thoroughly, whereupon someone fired a pistol shot at him. The shot tore through his right thigh and opened up a major vein. Ceko was rushed to a clinic in the vicinity, where the tired and overworked Dr Zakarov delayed in attending to him. He passed away a few hours later due to over-bleeding.

Meanwhile, the Chief and the 20 men have all been charged with murder. However, no one among the 20 men knew that any one of them had carried a pistol. Indeed, to-date, no one knows who fired the shot in the dimly lit shack.

Is the Prosecution likely to secure a conviction for this (murder) or any other offence? Explain, referring to relevant authority.

(25 marks)

QUESTION 5

Mnisi was a daring youngster who always lived beyond his means. He was employed as a cashier at a Goodies Ltd, a very busy firm that had a small and disorganised accounts section.

Early last month, Mnisi urgently needed E 5000 to pay school fees for his children. Thus, when his employer authorised payment of E 5000 to supplier Ahmad, Mnisi processed all the papers to pay Ahmed in cash. He then paid the E 5000 to himself, and paid off the school fees. He, however, planned to refund the money, i.e. pay Ahmad, as soon as he got his salary at month end. To his utter amazement, however, Ahmad turned up at the company premises to demand for his money two days later. Mnisi thought out a solution very quickly: He told Ahmad that his payment was being processed, and that he would take it to him later.

At the time, the General Manager who had earlier signed the papers for the cash payment, had just gone away for a month. So, Mnisi quickly prepared another payment voucher for E5000, and had a cheque signed for Ahmad by the Assistant General Manager. He made sure the cheque was a bearer bill (not crossed), explaining to the said Manager that the supplier needed the money urgently.

However, when Mnisi got the cheque, he decided to endorse it to his friend Jabu, from whom he got the cash, which he invested in a popular pyramid scheme, expecting to get "a quick buck". Meanwhile, to Ahmad, Mnisi explained that he would get him his money very quickly, "as usual" – Indeed, Mnisi had on several occasions in the past personally delivered Ahmad's cheques from the company to Ahmad.

When ten days passed and no money came from the pyramid scheme managers, Mnisi panicked. So, he stood at a quiet street corner one evening and snatched a hand-bag from a wealthy-looking lady. He found E 4500 in the bag, which amount he took straight to Ahmad and explained that he was sorry he had lost the E 500 in a skirmish.

Mnisi is now genuinely waiting for month end to pay the E 5000 back to the company from his salary.

Which offences, if any, has Mnisi committed? Explain, referring to authority.

(25 marks)

QUESTION 6

Referring to specific examples and or cases, explain and critically discuss the theory of *general deterrence*.

(25 marks)
