

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

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FIRST SEMESTER FINAL EXAMINATION, DECEMBER 2010

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : L 202

TIME ALLOWED : THREE HOURS

INSTRUCTIONS :

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

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QUESTION 1

Rejecting the defence of provocation in respect of a murder charge in *R v. Betty Motsa*, 1970 – 76 SLR 200, the court said:

“In regard to this, I think the case of *S v Mokonto* 1971 (2) SA 319 (A) is instructive... there ... Holmes J. A. said at p.327 that far from negating an intention to kill, the provocation, if it played any part, contributed to such intention.”

Referring to authority, critically discuss the defence of provocation in Swaziland, in the light of this quotation.

(25 marks)

QUESTION 2

Thabo and Vusie planned to attack Patel Shivji of Madonsa, and rob him of the large sum of money they had seen him withdrawing from Standard Bank, Manzini, that Saturday morning.

Their investigations revealed that Patel, who looked very timid, also possibly had no fire-arm, and that he stayed with three young children and a sickly wife. Thus, the two armed themselves only with knob-kerries and a pistol, for they were sure it would be a very quick and easy job.

However, when they got to Patel's house, a few hours later, Patel and family put up a fight. The children and the wife threw caustic chemicals into the eyes of Thabo, and immobilized him, while Patel fought with Vusie for the pistol. In the process, several bullets were fired by the pistol onto a nearby road, shattered the peace of a relatively quiet neighbourhood, and whizzed past James, an itinerant salesman who was passing by. At that very moment, James cried out, “I'm dead!” He then fell by the way side, dead. Medical evidence indicated that there was no bullet wound at all on his body, and that he had died from shock.

Thabo and Vusie have now been charged with murder and attempted robbery. Are the charges likely to succeed? Explain, referring to relevant authority.

(25 marks)

QUESTION 3

It has been suggested that the defence of non-pathological incapacity is so amorphous and uncertain that it is not, and must never ^{be} part of, the law in Swaziland.

Do you agree? Explain, referring to authority.

(25 marks)

QUESTION 4

Ceko, a senior accountant at Lottery Games Ltd (hereinafter Lottery), wrote to Musa informing him that he (latter) had won E500,000 in respect of his lottery ticket, and advising him to go to Lottery's offices and process his claim.

Musa subsequently visited the Lottery offices, and filled in a number of forms in accordance with Lottery's usual procedure. Among the forms was one where Musa was claiming the E500,000, to which form he attached the relevant winning ticket, and the PAYEE FORM by which he was authorising payment of the lottery prize money into his account, or another account of his choice. But Musa who was too excited just signed this form at the bottom in the space shown to him by Ceko – He did not read the same. The result was that he left it blank where he should have filled in the payee account details.

Later, Ceko filled in the blank spaces on the same PAYEE FORM, indicating account details of his (i.e. Ceko's) own business account in Nedbank, Nelspruit, as the account to which the E 500,000 was to be paid.

When, after a fortnight, Musa did not receive the lottery money, he complained to the management of Lottery. They were surprised, and when they checked with Ceko, he, too, expressed surprise. However, there is now evidence that Lottery had processed the PAYEE FORM in the usual way, and paid the money into Ceko's business account at Nedbank, Nelspruit. Evidence further indicates that Ceko has even drawn some of this money for his use.

Referring to authority, discuss all legal issues and consider the criminal liability of Ceko.

(25 marks)

QUESTION 5

The Viljoen Commission of Enquiry into the Penal Systems of South Africa described *strict liability* as “a legal and penological monstrosity”.

To what extent, if at all, is this correct characterisation (of *strict liability*)? Explain, referring to learned literature.

(25 marks)

QUESTION 6

Fikile of Mbabane National High School, is a tall, beautiful, fifteen-year old of strong physique. She is in love with Siphso, a young architect in Manzini. Recently, Fikile deceived her parents that she was going to a church retreat in Nhlngano for one week. This she did in order to honour an appointment with Siphso at Ezulwini Sun.

Siphso had also deceived his wife, Rosaline, that he was going to play golf upcountry. The two lovers then spent the week together at the said hotel. However, on the morning of their last day there, as they were leaving, Siphso's wife, Rosaline, was waiting for them at the main entrance – a friend had just informed her about this “Siphso-Fikile affair.”

As the two exited through the main hotel door, Rosaline ran towards them, lifted all her skirt and petty coat to her head and bared her buttocks and private parts for all to see. She uttered a harangue of insults at Fikile and then proclaimed loudly, “Foolish Girl! You won't see the end of this year! You won't!”

Fikile, who had heard from friends that Rosaline is an expert at witchcraft, got very worried. She decided to confess to her parents all about her relationship with Siphso. The parents then took up all these matters with the police.

Have any offences been committed? Explain, referring to authority.

(25 marks)
