

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATIONS, JULY 2011

TITLE OF PAPER : **CRIMINAL LAW**

COURSE CODE : **L 202**

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

INSTRUCTIONS : **A) THE PAPER CONSISTS OF SIX QUESTIONS.**

B) ANSWER ANY FOUR QUESTIONS.

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QUESTION 1

Referring closely to case law and illustrations, explain and critically discuss the concept of “an ordinary person” under the Homicide Act 44/1959.

[25 MARKS]

QUESTION 2

Homeboy Fakudze, the jealous husband of Fikile decides to kill her because he suspects her of extra-marital affairs. He seeks advice from his bosom friend, Joe Mnisi, who advises him to kill her by giving her a poisoned apple. Unknown to Fakudze and Mnisi, the plot to kill Fikile had been overheard by Fazila, a Somali servant employed by Mrs. Sally Mnisi. Fazila reveals the plot to her mistress and intimates to her that she would warn Fikile about the plot to kill her. Mrs. Mnisi who was apprehensive that her husband would be arrested by the Police if Fazila let the cat out of the bag to Fikile, locked Fazila up in her room the whole day.

Meanwhile, Joe Mnisi procured a poisoned apple for his friend, Fakudze. Fakudze then went home and gave the apple to his wife, Fikile, in the presence of their four-year old daughter, Helen. Fikile in turn gave the apple to Helen in the presence of her loving father, Homeboy Fakudze, who could not stop her from eating it, because he was afraid of being suspected. After eating the poisoned apple, Helen fell down and died. Homeboy Fakudze who was now totally heart-broken, took a pillow and strangled Fikile.

H. Fakudze, J. Mnisi and Ms. Sally Mnisi are charged with the murder of Fikile and Helen.

Advise them.

[25 MARKS]

QUESTION 3

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

(Snyman, CR, Criminal Law, p.23)

Do you agree? Explain.

[25 MARKS]

QUESTION 4

“Actus non facit reum nisi mens sit rea.”

With the aid of decided cases and illustrations, explain this maxim. Are there any exceptions to this cardinal doctrine of criminal law?

[25 MARKS]

QUESTION 5

Vusie owed Siphon E180,000, and the debt was years overdue for payment. Threatened with court action, Vusie invited Siphon to his home village in Mafutseni, and pointed to 20 head of cattle as payment. Unknown to Siphon, the cattle in fact belonged to Vusie's cousin, Martin, who was abroad.

However, as the cattle did not meet the whole debt, Vusie got hold of an advance-pay, CROSSED cheque of E15,000, which he had received at his work-place, very neatly deleted the CROSSING, and endorsed the cheque at the back to Siphon.

Additionally, a few days later, he searched for, and found the keys to (cousin) Martin's car, and, without permission from Martin's wife, started driving it. He transported people from Manzini to Mafutseni and back for about a month, and earned some E4000, which he also paid to Siphon.

He abandoned the car at Mafutseni trading centre when it broke down.

Referring to authority, indicate the offences, if any, which have been committed by Vusie.
[25 MARKS]

QUESTION 6

Dan had taken several long bottles of Castle Lager, when he met Vilane who was smartly dressed in a tie and grey suit.

"You are a student from St. Mark's!" Dan shouted at Vilane.

"What are you talking about?" Vilane answered, very puzzled.

In response, Dan hit Vilane several times on the head with a knob-kerrie, shouting, "You, students of St. Mark's are drug addicts and devil worshippers!"

Vilane died instantly.

Charged with the murder of Vilane, Dan testified that at the time of killing Vilane, he, Dan, genuinely thought Vilane was wearing the school tie of St. Mark's; that Vilane was a student from St. Mark's; and that he, Dan, understood in his heart that God had appointed him to visit retribution on all students of St. Mark's, for they were drug addicts and satanists.

He went on to explain that he did not ordinarily hold such "strange views", and that when he killed Vilane, he "he was not himself".

Medical evidence indicated that at the time of Dan's trial his mental state was normal.

Referring to authority, indicate the defences you would articulate if you were counsel for Dan. Which, if any, of these defences would be likely to succeed?

[25 MARKS]

Prof. J. Baloro (signature)
2/06/11