

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

DIPLOMA IN LAW

MAIN EXAMINATION PAPER DECEMBER 2011

TITLE OF PAPER : CRIMINAL LAW
COURSE CODE : IDE-DL022
TIME : THREE (3) HOURS
INSTRUCTIONS : 1. ANSWER QUESTION 1

(QUESTION 1 CARRIES 40 MARKS)

AND

2. ANY OTHER TWO QUESTIONS.

(QUESTIONS 2-5 CARRY
30 MARKS EACH)

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THE INVIGILATOR**

QUESTION 1

One evening, Joseph went for a drink at the Hedonist Bar at Manzini where he met Pamela, an attractive young woman. It was love at first sight, and the two love birds sat at a secluded corner of the bar to enjoy drinks. Unknown to Joseph, Pamela had a steady boyfriend, Elliot, who incidentally, was also at the bar having drinks with his friends. On his way to the rest room, Elliot saw Joseph with his girl. He was not amused. He approached Joseph, wagging his clenched fist and made a lunge at him. Elliot was restrained by other patrons at the bar. Before Joseph could react, Elliot pulled out a sjambok from under his shirt and smacked him across the face, opening a huge gash on Joseph's forehead. Elliot, in absolute fury, took a steel chair and threw it at Joseph. The chair hit Joseph's arm with great force, breaking the bones in the arm. Not satisfied, Elliot drew a revolver from his hip pocket and told Joseph, "I am going to shoot you!" He pulled the trigger, but the gun failed to fire because it was unloaded.

Elliot then turned to Pamela and said, "You are coming with me". Pamela obediently followed him. He took her to a hut and locked the door. Then wielding a knife and threatening to kill her, he ordered her to lie down. She obeyed and he had sexual intercourse with her. Charged with rape, Elliot argues that he did not rape her because he penetrated her anus with his finger only. Alternatively, he argues that even if he penetrated Lindiwe's vagina, the sexual intercourse was consensual because Lindiwe did not struggle or offer any resistance.

Discuss all legal issues arising.

[40 Marks]

QUESTION 2

"No person already legally married may marry in terms of this Act during the subsistence of the marriage, irrespective of whether that previous marriage was in accordance with Swazi law and custom or civil rites and any person who purports to enter into such a marriage shall be deemed to have committed the offence of bigamy". Section 7(1), the (Family) Marriage Act 47/1964.

Discuss.

[30 Marks]

QUESTION 3

Discuss the essential elements of the offence of *crimen injuria* and briefly explain the differences if any, between *crimen injuria* and *defamation*.

[30 Marks]

QUESTION 4

Lukhele and Nkambule had a dispute over a piece of land, with both of them claiming ownership. The dispute was referred to the local chief for arbitration, by both claimants of the land. While the arbitration was in progress, the chief directed that both Lukhele and Nkambule should desist from working on the land. The chief adjourned the proceedings for a few days because he was indisposed. Nkambule made a decision, that if he ever found Lukhele on the land during the adjournment of the arbitration proceedings, he will teach him a lesson. One day, Nkambule was passing by the land when he saw Lukhele, clearing a portion of it. Nkambule was furious. He sneaked behind Lukhele and hit him on the back of his neck with a huge knobkerrie. Lukhele fell down, unconscious. Believing that he was dead, and in order to cover up his deed, Nkambule dug a hole and buried Lukhele in it. The post-mortem report indicated that the blow from the knobkerrie did not kill Lukhele. He died as a result of being buried.

Discuss the liability of Nkambule on a charge of murder.

[30 Marks]

QUESTION 5

Briefly discuss the essential elements of the following offences:

(a) Receiving stolen property without reasonable cause **[15 Marks]**

(b) Robbery **[15 Marks]**

[30 Marks]