

UNIVERSITY OF SWAZILAND

135

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION, DECEMBER 2011

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.**

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QUESTION 1

Joe Mnisi's shop had been doing badly for a long time. He consulted a witchdoctor, who advised him that Futhi, owner of the shop next door was the one "causing trouble", diverting all customers to herself, using "spirit water". "If you go very early in the morning to the shop, you will find Futhi sprinkling that water around her premises!" the witch-doctor added.

The following day, Mnisi was at his shop by 6.a.m. At 6.30 a.m., he saw Futhi spraying water over her shop entrance, saying, "The God of Prophet T.B. Joshua, bring many, many customers to my shop today. Lord, by this water, I command a business bonanza unto my shop today, in Jesus name!"

Angered by what he saw and heard, Mnisi attacked and beat up Futhi, who lost two teeth as a result.

Mnisi is now charged with assault with intent to do grievous bodily harm.

Consider the possible defences available to him.

[25 MARKS]

QUESTION 2

"The principle of legality in Swaziland is more of an ideal than a reality".

By an LL.B II student at UNISWA.

Explain and critically discuss the quotation.

[25 MARKS]

QUESTION 3

Mazwi had been at Monash, Australia, for three years pursuing a Ph.D course in Science. On his return to Manzini, he found that although his employer had kept paying his monthly salary into his account, there was little money in the account.

His bankers investigated and found that an unknown person had been transferring money from Mazwi's account during Mazwi's absence, to a closed account that had formerly belonged to one Kevin Lucky, who had died years back.

It was further found that one Vusie, Head of Operations and Accounts at the bank, had a hand in this set-up. He had re-activated the deceased's account, and in collaboration with one Siphon, Head of Electronic Banking Security, an ATM card and password had been issued to one Kevin Lucky, who drew money regularly from the dead man's account, until about a year before Mazwi's return. The dead man's account had been closed again.

The living Kevin Lucky has not been found as yet. What are the likely charges, if any, against Vusie and Siphho? Explain, referring to authority. [25 MARKS]

QUESTION 4

“It is arguable that quite often there is a somewhat thin line between genuine non-pathological incapacity and insanity Surely the onus of proof and the resultant verdict should be more or less similar in both”.

By an LL.B. II student at UNISWA.

Do you agree? Explain, referring closely to relevant cases. [25 MARKS]

QUESTION 5

Steve and Mike were rivals over Nomvuyo.

When they met at the Greane Club in Manzini, a few weeks ago, a bitter quarrel broke out between them after they had had several beers. A fight followed in which Steve hit Mike hard on the head with a whisky bottle. Medical evidence later indicated that this injury could have killed Mike within 30 minutes if he did not get immediate medical attention.

While Mike was still on the floor, Stan, another enemy of Mike, stabbed Mike in the chest with a long-bladed knife.

The Greane Club management rushed Mike to hospital, where it was discovered that the injury in the chest had damaged the heart irreparably. A cardio-thoracic surgeon quickly got another heart to transplant into Mike. However, due to his religious convictions, Mike totally rejected the transplant.

He died two weeks later. Medical evidence emphasized that the wound on the head had weakened Mike greatly, but that the immediate cause of death was the heart condition.

Referring to authority, advise Steve and Stan, both of whom have been charged with the murder of Mike. [25 MARKS]

QUESTION 6

It has been suggested that the defence of provocation in Swaziland is unduly complicated and confusing.

Do you agree? Would you say that the South African approach (to provocation) is preferable?

Explain, referring to authority. [25 MARKS]