

UNIVERSITY OF SWAZILAND  
INSTITUTE OF DISTANCE EDUCATION

DIPLOMA IN LAW

MAIN EXAMINATION PAPER-DECEMBER 2012

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : IDE-DL022

TIME ALLOWED : 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)

TOTAL MARKS : 100

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GRANTED BY THE INVIGILATOR

### QUESTION 1

In terms of an oral agreement, Sipho gave Mandla a loan of E1000 on 1<sup>st</sup> June 2012. The loan was to be repaid on 30<sup>th</sup> June 2012. On the date the debt was due, Sipho went to Mandla's house to collect his money. Mandla refused to pay. A quarrel ensued between the two. In the course of the quarrel, Mandla told Sipho that the reason why he was not paying the loan was that he was aware that Sipho had in the past given loans to several people who had failed to pay back without any action by Sipho. Mandla therefore said he could not understand why he should be an exception. This annoyed Sipho and he stabbed Mandla ten times in the chest with a long knife which he had concealed in his clothes. Mandla had not fought back. Two of the stab wounds penetrated the heart and the lung for ten centimetres. The doctor who performed the post mortem testified that the wounds must have been inflicted with considerable force.

Sipho has been charged with murder arising from these facts. His argument is that he did not intend to kill Mandla, but he had simply lost self-control and he was remorseful for what he had done.

Discuss whether this is murder or culpable homicide.

[40 Marks]

### QUESTION 2

One day, during a minor argument between Dube and Themba, Dube threw a piece of bread at Themba. The bread hit Themba in the left eye. Themba started screaming in pain. Out of concern, Dube rushed to Themba's side to ascertain the extent of his injury. He saw that Themba's eye was red, with tears flowing freely from it. He took Themba to the clinic and offered to pay the medical expenses. Despite the efforts of the eye specialist, Themba lost his left eye.

Discuss the liability of Dube on a charge of assault with intent to do grievous bodily harm.

[30 Marks]

### QUESTION 3

Write brief notes on the essential elements of the following crimes:

a. Abduction

[10 Marks]

b. Abortion

[10 Marks]

c. Bigamy

[10 Marks]

[30 Marks]

#### QUESTION 4

Mrs Mbambo consulted Mr Dingaana a witch-doctor to find out the course of her barrenness. Mr Dingaana advised Mrs Mbambo that her womb was displaced and in order to correct this abnormality, he would have sexual intercourse with her. Mrs Mbambo was eager to have a child, so she allowed Mr Dingaana to have sexual intercourse with her. Mrs Mbambo returned home that evening to inform her husband what had happened at the witch-doctor's consultation room. He was furious. He left the house for a drink at a nearby *shebeen* leaving Mrs Mbambo alone in the homestead. She was sleeping in total darkness when a neighbour Mr Chikerema sneaked into her bed. She woke up startled, and asked, "Who are you?" In a muffled voice, Mr Chikerema responded, "Don't you know your own husband?" He proceeded to have sexual intercourse with Mrs Mbambo. Believing that the person was her husband, she did not resist.

Discuss the liability of Mr Dingaana and Mr Chikerema on a charge of rape.

[30 Marks]

#### QUESTION 5

"The basic idea of theft was that of *taking* and *carrying away* of property that belonged to another. As a matter of simple logic it followed that any type of property that cannot be seized or cannot be moved from one place to another or is not the subject of ownership cannot be stolen". Jonathan Burchell, Principles of Criminal Law, Revised 3<sup>rd</sup> Ed.2006 at 788.

Discuss.

[30 Marks]