

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION, DECEMBER 2012

COURSE NAME : CRIMINAL LAW

COURSE CODE : L202

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED
BY THE INVIGILATOR**

QUESTION 1

It has been said that Swaziland is in urgent need of a Penal Code.

Do you agree? Explain.

(25 marks)

QUESTION 2

Lungile, a JSD holder aged 39 years, was still unmarried. This situation troubled her father, Selby, a well-known millionaire in Swaziland.

Indeed, Selby told one Petros who urgently needed a loan of E40,000 from him (Selby) that all Petros had to do was to marry Lungile. Petros would then not only get the loan, but obviously all sorts of other moneys and benefits as well. What Selby did not tell him was that she was in fact barren.

Petros who had known Lungile for several years did not like her at all, for she was hot-tempered and totally unattractive.

Nevertheless, as he needed the money very badly, he decided there was no harm in marrying her. He accordingly informed Selby, who quickly organized a candle-light dinner for Lungile and Petros at one of the numerous Selby properties.

Unfortunately, on the evening in question, Petros rather quickly consumed the alcoholic fruity cocktail provided for the occasion. Thus, within a few minutes, he started showering endearments at a very surprised Lungile. He then sat very close to her, and subsequently tried to move her to a sofa in the room. She resisted. A fight ensued in which he tore off the top of her dress. Being a martial arts expert, she gave him a tough time. However, in course of the fight, Petros saw bloody pads fall on the floor from Lungile, indicating she was in her menstruation periods. He immediately stopped fighting. Shortly thereafter, he fell asleep on the floor. When he woke up, he was in a police cell.

In his statement at the police, he said he remembered being at a dinner with Lungile, but recalled nothing else.

- (a) Referring to relevant authority, consider all possible charges against him, as well as the defences that he may raise. (20 marks)
- (b) Briefly consider which charge, if any, might be raised against Selby, and state whether in your view, it is likely to succeed. (5 marks)

QUESTION 3

Explain and critically discuss the crime of abortion in the social and economic circumstances of Swaziland. (25 marks)

QUESTION 4

Sipho, Matt and Zakes were joint owners of a ten-hectare farm in Manzini. Sipho wanted to use the farm as collateral for a loan of E3,000.000 which he needed for his new business venture, but he knew Matt and Zakes would not agree.

His first hurdle was how to get hold of the title deeds which were in the custody of Matt. It was the rule among the three joint owners that none of them would make use of the title deeds without the express knowledge and consent of the others. But in the circumstances it would have been madness to inform the others.

Sipho, therefore, decided that he would simply go to Matt's home in Matt's absence and somehow get the deeds. He easily executed his plan because Matt's servant allowed him into the house and left him alone for quite a while. Sipho used the time to search for the deeds. He found them, then got an "expert" who neatly deleted the names of Matt and Zakes from the same. Thereafter, he successfully applied for the loan from Standard Bank, Manzini.

However, formal communication of the loan grant delayed. Meanwhile, Sipho urgently needed the letter to show it to his suppliers so that the business could take off quickly. Thus, when he learnt that the letter was ready, and at the bank manager's desk, he opened the unlocked door of the bank manager's office and picked up the letter from the manager's desk. He then took and showed it to the various suppliers before returning it to the manager's desk.

Referring to authority, identify the offences, if any, which Sipho has committed. (25 marks)

QUESTION 5

It has been said that for the defence/ plea of provocation to succeed, intention must clearly be negated.

Do you agree? Explain, referring to authority. (25 marks)

QUESTION 6

Bhembe was a serious, practising Christian of Nhlanguano. He, therefore, became emotionally disturbed when his father became a witchdoctor.

On one occasion, when he went to see the father, he found him in a dark room where "many voices were speaking", talking about people who had died or would die. Even the names of his sons were mentioned.

Subsequently, Bhembe's son died suddenly. Thereafter, his other son and his wife also died. These deaths all occurred during the next four months. Thereafter, his 12 goats and his 30 cows all fell very sick. His second wife also fell sick.

Believing that this was due to his father's witch-craft, he confronted the father and said, "Satan, this is your last day! Enough is enough! If I leave you, we'll all die!" He then cut off his father's head with a sharp long-bladed knife.

Bhembe was charged with murder.

(a) Consider the possibility of his raising the defence of insanity. (10 marks)

(b) Which other possible defences would be available to him? Explain. (15 marks)

(25 marks)