

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATIONS, JULY 2013**

**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**

It has been said that quite often there is a thin line between genuine non-pathological incapacity and insanity, and that, consequently, the onus of proof and the resultant verdict should be more or less similar in both.

Do you agree? Explain, referring to at least three reported cases.

[25 marks]

**QUESTION 2**

Futhi's boutique business had for a long time been doing badly. As the boutique was right next to the bus rank, where many people could see her beautiful attire advertised for sale, she wondered what the problem was. However, a few weeks ago, Futhi went to her boutique around 6 a. m., and found Zakes, the owner of the shop next door, spraying water over his shop entrance, saying, "The God of 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."

Futhi was shocked. She believed she then understood why Zakes' business was prospering while hers was 'dying'. Her interpretation of the situation was that by "this water witch-craft", Zakes was directing all customers and all business to himself. She got very angry, and attacked Zakes with an iron bar she found near her own shop entrance. In the resultant scuffle, Zakes sustained a compound fracture on the right hand.

Futhi has now been charged with attempted murder. Consider the possible defences available to her.

[25 marks]

**QUESTION 3**

"The content of the offence of rape in Swaziland is totally out-dated."

By an LLB (II) student at UNISWA.

Critically discuss the quotation, and indicate the necessary reforms.

[25 marks]

**QUESTION 4**

Sipho forced his way into a Moneni Pirates end-of-the-year party hosted by one Lukhele, at the latter's upcountry home in Nhlangano. He was consequently involved in a fierce fight with a partially drunken Lukhele, who stabbed him twice in the chest with a long-bladed knife. There was considerable delay in getting Sipho to hospital because the roads were almost impassable due to heavy rains a few days earlier.

On arrival at the hospital, at 3 a.m., medical examination indicated that Sipho had two deep wounds in the heart region, and that he had bled heavily. The young doctor who examined him, however, had never done heart surgery before, but he invited one Dr Zagrav, a Russian cardio-thoracic surgeon from a neighbouring hospital, to attend to him. Zagrav's preliminary diagnosis clearly pointed to the need to open up Sipho's heart in order to deal with the internal wounds therein.

However, when Sipho was informed, he flatly refused to allow "these unqualified Russians to play about with my heart".

Sipho died two days later partly due to heavy bleeding. Medical opinion also indicated that he would have had a 55 per cent chance of survival if he had allowed open-heart surgery on his heart.

Advise the Director of Public Prosecution on the possibility of successfully prosecuting Lukhele for murder.

[25 marks]

**QUESTION 5**

Professor Snyman suggests that retribution ought to form the backbone of 'our approach to punishment.'

Referring to learned literature, critically consider this suggestion in the social and economic circumstances of Swaziland.

[25 marks]

**QUESTION 6**

(a) Briefly discuss the elements of the offence of theft in Roman-Dutch law.

(10 marks)

- (b) Ceko owed E 100,000 to Martin. Threatened with court action, Ceko invited Martin to his (Ceko's) village, and, in Martin's presence, pointed to 25 head of cattle, saying, "Martin, I'm giving you those animals in payment for the money I owe you. They are yours from now."

Unknown to Martin, the cattle, in fact, belonged to Ceko's brother, Phineas.

Has Ceko committed theft? Explain, referring to authority.

(15 marks)

[25 marks]

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