

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**MAIN EXAMINATION PAPER - DECEMBER 2015**

**TITLE OF PAPER** : **CRIMINAL LAW II**

**COURSE CODE** : **DL022**

**TIME** : **THREE HOURS**

**INSTRUCTIONS** : **1. THIS PAPER  
CONSISTS OF  
FIVE QUESTIONS**

**2. QUESTION ONE IS  
COMPULSORY**

**3. ANSWER QUESTION  
ONE**

**AND ANY OTHER TWO  
QUESTIONS**

**TOTAL MARKS** : **100**

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## QUESTION ONE

About three months ago, Nkosinathi snatched Sphiwe, Sandile's girlfriend, from him. Sandile never forgave Nkosinathi. One day Sandile hatched a plan to frighten Nkosinathi to leave his girl. He bought a bottle of paraffin and set fire to Nkosinathi's three-bedroom apartment. The fire quickly spread through the apartment. The Fire Service was called by a bystander. The Fire Service arrived thirty minutes later. It took another thirty minutes for the Fire Service to put out the fire. Unknown to Sandile, at the time he started the fire, Sphiwe was asleep in one of the bedrooms in the apartment. By the time the fire was put out, Sphiwe had been overcome by smoke. She was unconscious and on the verge of death. One of the firemen, Sikelela, lifted Sphiwe from the bedroom to carry her to safety. On the way out, he dropped her. Sphiwe's head hit the floor causing a fracture in her skull. Sikelela called an ambulance but the ambulance was delayed by a thunderstorm. Sphiwe finally arrived at the hospital and received treatment for the skull fracture. After three days, she developed an infection to the wound. Doctor Nonhlanhla treated the infection with an antibiotic to which Sphiwe was allergic. Her condition did not improve, so the following day, Doctor Nonhlanhla gave her the same antibiotic in very high doses. During the night, Sphiwe became delirious as a result of the high doses of the antibiotic. When she saw Doctor Nonhlanhla approaching, she panicked, jumped out of the window and fell four floors to the ground. She was killed instantly.

Discuss, the liability, if any, of the following, for Sphiwe's death:

- |                      |            |
|----------------------|------------|
| a. Sandile           | [15 Marks] |
| b. Sikelela          | [10 Marks] |
| c. Doctor Nonhlanhla | [15 Marks] |

[40 Marks]

## QUESTION TWO

"The authorities are clear upon the point that though the consent of a woman may be gathered from her conduct apart from her words, it is fallacious to take the absence of resistance as *per se* proof of consent. Submission by itself is no grant of consent, and if a man so intimidates a woman as to induce her to abandon resistance and submit to intercourse to which she is unwilling, he commits the crime of rape." Per Murray, A.J.A; in *Rex v Swiggelaar*, 1950 (1) PH H61 (A) [207].

Discuss.

### QUESTION THREE

“For an assault to be committed where no physical impact takes place there must be a threat of immediate personal violence in circumstances that lead the person threatened reasonably to believe that the other intends and has the power immediately to carry out the threat.” Schreiner, J., in *R v Sibanyone*, 1940 JS 40 (T).

Discuss.

[30 Marks]

### QUESTION FOUR

Discuss the essential elements of the crime of theft and explain why a person cannot be charged for stealing a thing which is incapable of being stolen.

[30 Marks]

### QUESTION FIVE

Explain the differences between *crimen injuria* and defamation, and discuss the defences available to a person charged with defamation.

[30 Marks]

END OF PAPER