

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN), DECEMBER 2015

TITLE OF PAPER : CRIMINAL LAW

COURSE CODE : L202

MARKS ALLOCATED : 100 MARKS

INSTRUCTIONS : 1. THIS PAPER CONSISTS OF SIX (6) QUESTIONS.
2. ANSWER ANY FOUR (4) QUESTIONS.

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BY THE INVIGILATOR**

QUESTION ONE

Critically examine the scope as well as the rationale and the limitations of the intoxication defence under the criminal law of Swaziland.

[25 marks]

QUESTION TWO

The maxim "*actus non facit reum nisi mens sit rea*" is said to be the ethical foundation of a rational criminal justice system. To what extent does the criminal law of Swaziland recognise this maxim? How does one reconcile this maxim with offences of strict liability?

[25 marks]

QUESTION THREE

With the aid of relevant decided cases and/or illustrations, critically discuss the differences between the three property offences of **Theft**, **Fraud** and **Theft by False Pretences**. To what extent is it correct to say that "all cases of theft by false pretences are cases of fraud, but not all cases of fraud may qualify as cases of theft by false pretences?"

[25 marks]

QUESTION FOUR

Steven Dlamini, a business tycoon, has learnt that his business rival, Peter Simelane had E 1 000 000 (One Million Emalangeni) in hard cash stashed in a safe at his home in Coats Valley. He recruited three local thugs, Bravo, Spikiri and Bricks to go and rob Simelane. He supplied them with a gun, a get-away car as well as a master key to open the safe in which the money was kept. He had also bribed Maria, Simelane's maid, to leave one of the windows in Simelane's house open to facilitate entry for the robbers.

Before the thugs set off for their nocturnal expedition, Steven warned them not to use any aggression. He stressed that the gun was only to be used to frighten away any person they might find in the house. The plan was that Bravo would remain on the street keeping the get-away car running. Spikiri and Bricks were to go into the house and take the money.

When Spikiri and Bricks got to the Simelanes house, they found that someone had left the kitchen door open, so they did not have to use the window which Maria had, pursuant to the original plan, left open. Spikiri and Bricks succeeded in taking the money from the safe. Intending to make a quick exit after their surprising easy coup, they headed again for the kitchen door. However, before they could reach the kitchen door, someone pushed the door

open from outside. It was Simangele, the 18 year-old daughter of Simelane who had slipped out on a date with her boyfriend and had been the one who left the kitchen door open so as not to arouse any suspicion from her father when she came back late from her date. At this point, Spikiri panicked and, intending to frighten her to move out of the way, shot at her two times and she died on the spot. One of the bullets which missed Simangele ricocheted/bounced off the kitchen sink and almost killed baby Bubus, who was crawling joyfully towards the kitchen.

Steven Dlamini, Bravo, Spikiri, Bricks and Maria are charged with murder, attempted murder and theft. They have retained you as Counsel. Advise them as to their potential criminal liability.

[25 marks]

QUESTION FIVE

- (a) With the aid of decided cases and/or illustrations, differentiate between *dolus indirectus* and *dolus eventualis*.

[10 marks]

- (b) A, who hates his neighbour B because he suspects that B has designs on his beautiful young wife, plans to kill him. One day the two neighbours go out hunting at night. When they got to the forest they separated to look for wild animals. A makes his way to a spring which he knows is a favourite haunt for warthogs. At the spring, he hears a splash and a grunt. He fires his gun at an object in the water, believing that he was shooting at a warthog. The object turns out to be B, who appears to be dead. A, who is happy that B is dead throws the body into the spring. B did not die from the bullet wound, but drowned.

What, if at all, is the criminal liability of A?

[15 marks]

QUESTION SIX

- (a) With the aid of decided cases and illustrations, explain the concept of *novus actus interveniens* in homicide cases.

[10 marks]

- (b) Discuss the problem of causation in the following hypothetical cases:
- (i) X is suffering from terminal cancer. A doctor has advised Mrs X that her husband has only three months to live. Mrs X, who is keen to marry her lover stabs X in the heart. While X is being rushed to

hospital the ambulance overturns due to the negligent driving of the driver and X is killed.

[8 marks]

- (ii) During a brawl in a bar, Y inflicted a blow on X's temple. The blow which was not particularly severe, fractured X's unusually thin skull. X was killed on the spot.

[7marks]