

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

TITLE OF PAPER : CRIMINAL LAW

COURSE NUMBER : L202

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS:

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

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

QUESTION ONE

With the aid of decided cases and/or illustrations, critically discuss the requirement that for the provocation defence to succeed under our law, the provocation must be such as would deprive “an ordinary person” of the power of self-control. Who is the “ordinary man” in this context?

[25 marks]

QUESTION TWO

(a) What in your opinion are the crucial differences between the defences of insanity and automatism?

[10 marks]

(b) A and B are brothers. A who hates B because the latter is the designated heir to the vast family sugar fortune decides to do away with B. On B's birthday, A sends him a bottle of brandy into which he has dumped a quantity of arsenic. At B's birthday party that night, B opens the bottle of brandy and pours for himself a glass of the poisoned drink. Before he could drink the brandy, C, his fiancée who does not like B to drink, snatches the glass from B's hand and pours the drink into the toilet. At that point, V, who is B's friend and the DJ at the party takes and drinks the brandy in celebration with his friend. V subsequently dies from the poisoned brandy. The police, who have all along been following A, step in and arrest him.

What crime(s) has A committed? Would it make any difference if it were A himself who had a change of heart and had snatched the glass of brandy from his brother when B was about to drink it (before V drank the brandy)?

[15 marks]

QUESTION THREE

“Where *mens rea* is an element of the crime charged, *actus reus* and *mens rea* must be contemporaneous.”

With the aid of relevant decided cases, critically discuss this principle of the criminal law.

[25 marks]

QUESTION FOUR

Critically examine the scope as well as the rationale and limitations of the defence of Insanity under the Criminal law of Swaziland.

[25 marks]

QUESTION FIVE

Roger Twala, the insecure husband of Lindiwe decided to kill her because he suspected her of extra-marital affairs. He sought advice from his boyhood friend Martin Dlamini who advised him to kill her by giving her a poisoned apple. Unknown to Roger and Martin, the plot to kill Lindiwe was overheard by Paula, a Mozambican servant employed by Mrs Dlamini. Paula revealed the plot to her mistress and intimated to her that she had to warn Lindiwe about the plot to kill her. Mrs Dlamini, who was apprehensive that her husband would be arrested by the police if Paula “let the cat out of the bag” to Lindiwe, locked Paula up in her room the whole day.

Meanwhile, Martin Dlamini procured a poisoned apple for his friend, Roger. Roger went home and gave the apple to his wife, Lindiwe in the presence of their four year-old daughter, Palesa. Lindiwe gave the apple to Palesa in the presence of her loving father, Roger Twala, who could not stop her from eating it because he was afraid of being suspected. After eating the apple, Palesa fell down and died. Roger, who by then was totally heartbroken, took a pillow and strangled Lindiwe to death.

Roger Twala, Martin Dlamini and Mrs Dlamini are charged with the murder of Lindiwe and Palesa. Advise them.

[25 marks]

QUESTION SIX

With the aid of decided cases discuss the criminal liability of D in the following hypothetical cases;

- (a) D persuades Y to lend him E100 representing that he needs the money for his wife’s funeral. D’s wife is however alive and well. D loses the money gambling at the Happy Valley.

[6 marks]

- (b) D received twelve (12) heard of cattle from V under the *sisa* agreement. Six months later, W the wife of V, acting under V’s

authority, asked for the return of the cattle. D refused to hand over the cattle maintaining that he had purchased them.

[7 marks]

- (c) D took a car belonging to his employer, Mr Shongwe, without the knowledge of the latter to carry passengers from Manzini to Big-Bend. He charged the passengers E 150 and pocketed the money. Before the trip to Big-Bend he had taken E 25, the property of Mrs Shongwe for the purpose of buying a present for Linda, his girlfriend. It was his intention to replace the E 25 as soon as he came back from Big-Bend.

[12 marks]