

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER (MAIN), DECEMBER 2016**

**TITLE OF PAPER : CRIMINAL LAW- GENERAL PRINCIPLES**

**COURSE CODE : LAW 201**

**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

“Discussions of the retributive philosophy of punishment tend to be confused because the term is used in so many senses.” (Clarkson and Keating: CRIMINAL LAW).

Critically discuss the various senses in which the Retributive theory of punishment has been used. To what extent, if at all, should Retribution be a punishment option in Swaziland.

[25 marks]

### QUESTION TWO

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

[25 marks]

### QUESTION THREE

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 FOUR

(a) Under what circumstances would **omission to act** constitute the *actus reus* of an offence under the criminal law of Swaziland?

[13 marks]

(b) With the aid of relevant decided cases, advance arguments for and against the imposition of **strict liability** under the criminal law.

[12 marks]

### QUESTION FIVE

(a) Discuss criminal capacity and the age of criminal responsibility in Swaziland.

[10 marks]

- (b) Your client Musa Dlamini is a small scale traditional farmer at Mshingishingini. He cultivates and sells farm products along the Mbabane- Matsamo public road. In a bid to expand his operations and effectively compete with commercial farmers, Dlamini went to the Netherlands in January 2013 to learn about the latest farming techniques. During his short-course in the Netherlands, Dlamini was introduced to genetic engineering, a form of biotechnology in which the genes of an organism are deliberately altered by a method other than conventional breeding in order to change one or more of its characteristics. On his return to Swaziland in July 2013, he flooded the food market with maize flour (mealie meal) made from genetically modified maize. The result was a huge economic bonanza for him as he now owns a fleet of the latest top of the range cars.

The financial success of Dlamini has earned the enmity of some powerful rivals in the mealie meal production industry. These rivals managed to convince the Minister of Agriculture that genetically modified crops are unsafe for human consumption. In September 2013, Parliament passed a law making it a crime to sell genetically modified food in Swaziland. Dlamini was charged, tried, convicted and sentenced for contravening this statute. The prosecution's case against him was based on and supported by sales records to individuals and shops in respect of activities between July 2013 and September 2013. Advise your client.

[15 marks]

### QUESTION SIX

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

[15 marks]

- (d) When, if at all, can an accused under our law rely on the defence of:

(i) physical impossibility,

(ii) legal impossibility

to a charge of attempt to commit a crime

[10marks]