

**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**MAIN EXAMINATION PAPER DECEMBER 2018**

**TITLE OF PAPER : CRIMINAL LAW II**  
**COURSE CODE : DL 022**  
**TIME ALLOWED : THREE (3) HOURS**  
**MARKS : 100**  
**INSTRUCTIONS : a) QUESTION 1 IS COMPULSORY**  
**: b) ANSWER ANY TWO OTHER QUESTIONS**

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THE INVIGILATOR**

**UNIVERSITY OF ESWATINI**

## 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 tripped and 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 *per se* as 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 Swiggelar*, 1950 (1) PH H61 (A) [207].

Discuss.

[30 Marks]

### 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

Explain the following statements:

- a) A person cannot be charged with the theft of a thing which is incapable of being stolen.

[15 Marks]

- b) The offence of theft continues for as long as the thief holds the property in question.

[15 Marks]

[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**