

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION (MAIN), DECEMBER 2018

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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GIVEN 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

“It is arguable that quite often there is a somewhat thin line between genuine non-pathological incapacity and insanity... Surely the onus of proof and the resultant verdict should be more or less similar in both.” By an LL.B II student at UNESWA.

Do you agree? Explain, referring closely to relevant cases.

[25 marks]

QUESTION THREE

“The purpose of criminal punishment should be the rehabilitation of the criminal and nothing else.” Do you agree?

[25 marks]

QUESTION FOUR

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

[10 marks]

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

[15 marks]

[25 marks]

QUESTION FIVE

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 off the kitchen sink and almost killed baby Bubu, 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 SIX

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

[15 marks]

- (b) 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.

[10 marks]

[25 marks]