

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
EXAMINATION PAPER (MAIN), 2019

TITLE OF PAPER : CRIMINAL LAW- SPECIFIC OFFENCES

COURSE CODE : LAW 202

MARKS ALLOCATED: 100 MARKS

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
GIVEN BY THE INVIGILATOR**

QUESTION ONE

Explain and critically discuss the offence of rape under our criminal law.

[25 marks]

QUESTION TWO

A week ago, Ibrahim Ceko, a tall and well-built soldier, paid a visit to his girlfriend, Ruth, in Lavumisa. Unfortunately, he strongly resembled a robber that had escaped arrest a year earlier. When the Chief heard of him, he summoned 20 trustworthy men and instructed them to arrest and bring him to his office for interrogation. He emphasised that no violence should be used.

On the day in question, around 10 p.m., the selected men armed themselves with sticks and proceeded to the shack where Ceko was having a good time with Ruth. They introduced themselves and asked him to accompany them to the Chief's office. He refused.

They tried to take him by force, but he turned out to be too strong for them. Indeed, in the ensuing scuffle, he beat them up thoroughly, whereupon someone fired a pistol shot at him. The shot tore through his right thigh and opened up a major vein. Ceko was rushed to a clinic in the vicinity, where the tired and overworked Dr. Zakarov delayed in attending to him. He died a few hours later due to over-bleeding.

Meanwhile, the Chief and the 20 men have all been charged with murder. However, no one among the 20 men knew that any one of them had carried a pistol. Indeed, to-date, no one knows who fired the shot in the dimly lit shack.

Is the prosecution likely to secure a conviction for murder or any other offence? Explain, referring to relevant authority.

[25 marks]

QUESTION THREE

With the aid of decided cases and/or illustrations, critically distinguish between the offences of murder and culpable homicide under our law. Under what circumstances may homicide committed in self-defence exculpate one from criminal liability?

[25 marks]

QUESTION FOUR

Mnisi is a daring youngster who has always lived beyond his means. He is employed as a cashier at Goodies Ltd., a very busy firm that had a small and disorganised accounts section.

Early last month, Mnisi urgently needed E 5000 to pay school fees for his children. Thus, when his employer authorised payment of E 5000 to supplier Ahmad, Mnisi processed all the papers to pay Ahmad in cash. He then paid the E 5000 to himself, and paid off the school fees. He, however, planned to refund the money, i.e. pay Ahmad, as soon as he got his salary at month end. To his utter amazement, however, Ahmad turned up at the company premises to demand his money two days later. Mnisi thought out a solution very quickly; he told Ahmad that his payment was being processed, and that he would take it to him later.

At the time, the firm's General Manager who had earlier signed the papers for the cash payment, had just gone away for a month. So, Mnisi quickly prepared another payment voucher for E 5000, and had a cheque signed for Ahmad by the Assistant General Manager. He made sure the cheque was a bearer bill (not crossed), explaining to the said Manager that the supplier needed the money urgently.

However, when Mnisi got the cheque, he decided to endorse it to his friend Jabu, from whom he got the cash, which he invested in a popular pyramid scheme, expecting to get "a quick buck". Meanwhile, to Ahmad, Mnisi explained that he would get him his money very quickly, "as usual". Indeed, Mnisi had on several occasions in the past personally delivered Ahmad's cheques from the company.

When ten days passed and no money came from the pyramid scheme managers, Mnisi panicked. So, he stood at a quiet street corner one evening and snatched a hand-bag from a wealthy looking lady. He found E 4500 in the bag, which amount he took straight to Ahmad and explained that he was sorry he had lost E 500 in a skirmish. Mnisi is now genuinely waiting for month end to pay the E 5000 back to the company from his salary.

Which offences, if any, has Mnisi committed? Explain, referring to authority.

[25 marks]

QUESTION FIVE

- (a) “The two property offences, theft and theft by false pretences although functionally related, are aimed at two different acquisitive techniques”.

With the aid of decided cases and/or illustrations, carefully differentiate between these two offences under our law. What socio-economic functions are these two offences designed to serve?

[10 marks]

- (b) With the aid of authority and/or illustrations, carefully differentiate between the offences of people trafficking and people smuggling under the laws of Eswatini.

[15 marks]

[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 E 100 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) head of cattle from V under the *sisu* 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]

[25 marks]