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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

EXAMINATION PAPER, DECEMBER 2013
(MAIN)

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| TITLE OF PAPER | : | CRIMINAL LAW |
| COURSE CODE | : | L202 |
| DURATION | : | 3 HOURS |
| MARKS ALLOCATED | : | 100 MARKS |
| INSTRUCTIONS | : | ANSWER QUESTIONS <u>ONE</u> AND TWO WHICH ARE COMPULSORY, AND ANY 3 OF YOUR CHOICE. |

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Question 1

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The appended pictorials show the various stages in a Swazi state-sponsored execution for an accused, Barney "the ripper" Gulwako, who had been charged and convicted of murder in 1996. Persistently protesting his innocence while on death row since, it is recorded that his *modus operandi* was to throttle, rape and then impale his victims (all 32 women, half of them aged 10 to 16 years) with a hot iron rod before disemboweling their innards and hanging them.

But, incidentally, Barney's physique and apparent demeanor belied the atrocious acts credited to him. In fact, Barney was a demure, anorexic diabetic who hardly appeared to be able to lift a chair let alone muster the strength to rape and butcher all the full-bodied deceased.

At his execution, while strapped to an electric chair, the heavy current launched was not enough to cause immediate death. It was decided to combine the electric current with a lethal injection to his neck, all this while his excruciating screams could be heard outside the prison walls. Eventually, some three (3) hours later, Barney died.

Referring to relevant authorities, opinions and illustrations, critically discuss this form of punishment in Swaziland.

Question 2

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Sputnik and his friend, Spaza hiked into the woods to hunt for impala together. Being experienced hunters, they both wore bright red bibs so that other hunters would not mistake them for impala. Benny, a less experienced hunter had been hunting on his own on the other side of the woods. (In fact, Benny had had designs on Sputnik's wife, and had previously hatched a plan to kill Sputnik and make it look like an accident). He caught sight of "them" through the trees and, thinking they were impala, shot both of them. Although he saw a couple of flashes of red and heard voices and laughter just a minute or two earlier, it never occurred to Benny that he might be shooting at fellow hunters than impala.

Benny approached his "prey", and found Sputnik, who had been shot at the back, lying on the ground unconscious but breathing. He also saw Spaza, who had been shot in the chest stumbling away in a daze. Realizing what he had done, Benny jumped up in eerily excitement at fortuitous turn of events, but quickly composed himself when he realized that the gun he was carrying was illegally in his possession as he had no license. He promptly fled the scene in panic.

A short while later, Gamza, who was hiking in the same woods, came across Sputnik lying face down on the ground. By ironic twist of fate, Gamza was Sputnik's father (although Gamza did not recognize his bloodied son lying there). Gamza knew that Sputnik was still alive (he could see him silently breathing), but he decided that he did not want to get involved in the mess and left. Sputnik subsequently died from the gunshot wound.

At the trial, medical evidence suggested that had Gamza promptly sought medical help, Sputnik would have survived the gunshot wound. The medical evidence also showed, however, that Sputnik although appearing outwardly healthy, was terminally ill and would have died anyway within days.

Meanwhile, Spaza stumbled onto a nearby house and found an idling car which he promptly boarded and drove to seek help. He had thought that

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even though he would pass out soon, at least he needed to make an attempt to reach the nearest clinic. On the way to the clinic, he lost consciousness, let go of the steering, crashed and killed three primary school children walking back home from school. The fourth child survived and was able to call for help, as a result of which Spaza survived.

With all these facts in mind, discuss the criminal liability of **Benny, Gamza** and **Spaza** for Murder.

[25 Marks]

Question 3

Specifically citing and closely referring to the statutory provisions render a critical discussion of the defence of Provocation under our law.

[25 Marks]

Question 4

- a) Write short notes on;
- i) *Nullum crimen sine lege, nulla poena sine lege*
 - ii) Contempt of court *ex facie curiae*
 - iii) Fraud

(5 Marks each)

- b) Critically examine the scope as well as the rationale AND limitations of the defence of Intoxication especially with regard to the aspect of appreciating the “*moral or legal wrongfulness*” of the act.

(10 Marks)

[25 Marks]

Question 5

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Discuss the criminal liabilities of Spaza and Zaza in the following cases;

- a) The defendant, Mrs Spaza, was infatuated with her attorney. She was charged with the murder of a woman who was having an affair with her attorney. She had instructed one, Zaza to commit the murder. He pleaded guilty to the murder but said in evidence that up to the point when he went berserk and killed the woman, he had come to a decision not to go through with the plan. The defendant appealed against her conviction for murder.

(10 Marks)

- b) The two appellants, Spaza and Zaza, were involved with others in torturing, kicking, punching and sexually abusing a man. The man was then strangled to death by one of the others. These events were then repeated on a second occasion, but this time it was Spaza and Zaza who themselves killed the victim by strangling him with a shoelace. They protested, on a charge of murder (and subsequent conviction), and claimed in defence that they acted under duress at the orders of and through the fear of one Murray whom the trial judge described as powerful, sadistic, violent and the dominant figure. They appealed this conviction.

(15 Marks)

Total [25 Marks]

Question 6

Somnotfo Dlamini, a business tycoon, had learnt that his business rival, Ritchie Rich had E1 million in hard cash stashed in a safe at his mansion in Coates Valley, Manzini. He recruited three "professional" thugs, Bravo, Spikiri and Drago to go and steal it from Ritchie Rich.

He supplied them with a toy-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,

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Ritchie's maid, to leave one of the windows in Ritchie's house open to facilitate entry for them.

Before the band set off for their nocturnal expedition, Somnotfo warned them not to use any force or 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 Drago were to go into the house and take the money.

When Spikiri and Drago got to the Ritchie 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. When Spikiri and Drago open the safe with the master key, to their shock, there is no money inside. Clearly infuriated and disgruntled at this turn of events, the duo headed again for the kitchen door. However, before they could reach the kitchen door, someone pushed the door open from the outside. It was Samantha, the 18 year-old daughter of Ritchie Rich who had slipped out on a date with her boyfriend and had been the one who had 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, Drago who was tiptoeing behind Spikiri, got frightened fled the scene through the open window leaving Spikiri behind. Spikiri, who was carrying the gun panicked and, intending to frighten her to move out of the way, shot her six times in the chest. She died on the spot. One of the bullets ricocheted/bounced off the Kitchen sink and almost killed Baby "Bubu", who was crawling joyfully towards the kitchen. When Spikiri ran out to the car, he was shocked to find that Bravo in the waiting car was not there (in fact, he had driven off immediately when he had heard the gunshots).

The five fumbling criminals **Somnotfo, Bravo, Spikiri, Drago** and **Maria** are charged with Murder, Attempted Murder and Theft by the Director of Public Prosecutions. They have retained a trusted Advocate to represent them.

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They all claim they are innocent and that they have defences against the charges. Are they innocent?

As the presiding Chief Justice hearing the case, render a balanced judgment that fully evaluates the accused's various roles and determine their criminal liability.

In doing so, you must separate each of the five accused by analyzing their liability for each of the crimes. You must refer to all the arguments for and against each accused person for each crime in question.

[25 Marks]

(1) INITIATION



EXAMPLE OF STATE-SPONSORED EXECUTION THROUGH ELECTROCUTION

(2) PROCESS



EXAMPLE OF STATE-SANCTIONED EXECUTION

(3) RESULT (DEATH)

