

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**MAIN EXAMINATION PAPER DECEMBER 2016**

**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 (2) OTHER QUESTIONS.**

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THE INVIGILATOR**

## QUESTION ONE

Mr Nhlabatsi was a native of an imaginary remote village somewhere in the rural area of Swaziland. He lived in this village from the day he was born until his death. This is the story of how his death came about. One day in an unprovoked attack, Mr. Khumalo, a resident of the village hit Mr. Nhlabatsi with a knobkerrie on the side of the head. This opened a huge cut on Mr. Nhlabatsi's head. He was advised by a neighbour who saw the seriousness of the wound to go to hospital. He refused to take the advice. Instead he administered some herbs on the wound and tied a piece of cloth around his head to cover it. A few days later, he became very sick. Realizing the seriousness of his condition, family members bundled him into a vehicle and sent him to hospital where he was admitted. At the hospital he was attended to by a nurse who cleaned the wound and covered it with sticking plaster. She then gave him Panado tablets and put him to bed. Later during the same day, the doctor on duty examined the wound, had it sutured and prescribed a course of antibiotic injections. He also told Mr. Nhlabatsi to remain immobile in bed. However, Mr. Nhlabatsi would not lie down in his bed, but kept walking all over the ward. This caused the wound to bleed profusely. Against medical advice, he left the hospital. Two days after leaving the hospital he suffered continuous bleeding and died.

Discuss Mr. Khumalos liability for the murder of Mr. Nhlabatsi with reference to decided cases.

[40 Marks]

## QUESTION TWO

“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 THREE

“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 FOUR

Discuss the essential elements of the crime of theft and explain why a person cannot be charged for stealing a thing which is incapable of being stolen.

**[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]**