

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2018

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.

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GIVEN BY THE INVIGILATOR

QUESTION ONE

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 TWO

Lungile, a lady aged 39 years, was still unmarried. This situation troubled her father, Selby, a well-known millionaire in Swaziland.

Indeed, Selby told one Petros who urgently needed a loan of E 40 000 from him (Selby) that all Petros had to do was to marry Lungile. Petros would then not only get the loan, but obviously all sorts of other moneys and benefits as well. What Selby did not tell him was that she was in fact barren. Petros who had known Lungile for years did not like her at all, for she was hot-tempered and totally unattractive.

Nevertheless, as he needed the money very badly, he decided there was no harm in marrying her. He accordingly informed Selby, who quickly organised a candle-light dinner for Lungile and Petros at one of the numerous Selby properties.

Unfortunately, on the evening in question, Petros rather quickly consumed the alcoholic fruity cocktail provided for the occasion. Thus, within a few minutes, he started showering endearments at a very surprised Lungile. He then sat very close to her, and subsequently tried to move her to a sofa in the room. She resisted. A fight ensued in which he tore off the top of her dress. Being a martial arts expert, she gave him a tough time. However, in the course of the fight, Petros saw bloody pads fall on the floor from Lungile, indicating that she was in her menstruation periods. He immediately stopped fighting. Shortly thereafter, he fell asleep on the floor. When he woke up, he was in a police cell.

In his statement to the police, he said he remembered being at a dinner with Lungile, but recalled nothing else.

- (a) Referring to relevant authority, consider all possible charges against him, as well as the defences that he may raise;

[20 marks]

- (b) Briefly consider which charge, if any, might be raised against Selby, and state whether in your view, it is likely to succeed.

[5 marks]

[25 marks]

QUESTION THREE

It has been said that Swaziland is in urgent need of a Penal Code.

Do you agree? Explain.

[25 marks]

QUESTION FOUR

Mazwi had been at Monash, Australia, for three years pursuing a Ph.D. course in science. On his return to Manzini, he found that although his employer had kept paying his monthly salary into his account, there was little money in the account.

His bankers investigated and found that an unknown person had been transferring money from Mazwi's account during Mazwi's absence, to a "closed account" that had formerly belonged to one Kevin Lucky, who died some years back.

It was further found that one Vusie, the Head of Operations and Accounts at the Bank, had a hand in this set-up. He had re-activated the deceased's account, and in collaboration with one Siphon, the Head of Electronic Banking Security, an ATM card and password had been issued to one Kevin Lucky, who drew money regularly from the dead man's account, until about a year before Mazwi's return. The dead man's account had been closed again. The living Kevin Lucky has not been found as yet.

What are the likely charges, if any, against Vusie and Siphon? 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 Swaziland.

[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 *sisa* 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]