



KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2019/2020
SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF
LAWS

LPL 111: CRIMINAL LAW II

DATE: Thursday, 5th November 2020

TIME: 9.00a.m-11.00a.m

INSTRUCTIONS:

1. ALL Questions are Compulsory
 2. Note that penalties accrue for failure to answer Question One.
 3. Support your answers with illustrations from relevant case law, statutory provisions and any other applicable references wherever necessary.
 4. Your writing must be **NEAT** and **LEGIBLE**
 5. Your answer booklet must bear your **REGISTRATION NUMBER**, both on the cover and every written page therein.
 6. Do not scribble or draft answers on the inner or outer cover pages of your answer booklet.
 7. Do not write anything except your **REGISTRATION NUMBER** on this Question Paper.
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1. Steven Dlamini, a business tycoon, has learnt that his business rival, Peter Simelani had KSHS.10, 000,000 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 Simelani. 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, Simelani's maid, to leave one of the windows in Simelani'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 Simelani's house, they found that someone had left the kitchen door unlocked, 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 Simelani who had slipped out on a date with her boyfriend and had been the one who left the kitchen door unlocked 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 twice and she died on the spot. One of the bullets which missed Simangele bounced off the kitchen sink and almost killed baby Bubu, who was crawling joyfully towards the kitchen.

- a) Steven Dlamini, Bravo, Spikiri, Bricks and Maria have been arrested. Advise them as to their potential criminal liability (20 Marks)
 - b) Explain the defenses available to them. (10 Marks)
2. Battery is committed where some force is applied on the complainant. Assault on the other hand, is where battery is actually threatened.
- a) In light of the above and with the help of case laws, discuss the categories of assault and aggravated assault envisaged under the provisions of the Penal Code, Chapter 63 Laws of Kenya. (10 Marks)
 - b) Briefly discuss instances in which the concept of lawful assault can be available as a defence. (10 Marks)
3. In *Wycliff Oluoch Odhiambo v. Republic*, CR. CRA NO 27 OF 1988 (Gicheru. Tunoi and Okubasu, JJA), held that there was evidence that the appellant did indeed stab the deceased and cause his death, but there were doubt as to whether he had malice aforethought. His conviction of murder was substituted with manslaughter.
- In view of the above holding, discuss citing case laws and relevant statutes extenuating circumstances where the *men rea* for manslaughter falls short of malice aforethought. (20 Marks)