



UNIVERSITY OF NAIROBI

EXAMINATIONS 2021/2022
SUPPLEMENTARY/SPECIAL EXAMINATIONS FOR THE DEGREE OF
BACHELOR OF LAWS

GPR 105: CRIMINAL LAW 1

DATE: FEBRUARY, 1 2023

TIME: 9.00 AM – 1200PM

INSTRUCTIONS:

1. Answer Question One(1) which is Compulsory and Any other Two(2) Questions in this Examination.
2. The Compulsory Question carries 30 Marks while the others 20 Marks each.
3. Candidates should support their answers with relevant case law, statutory provisions, scholarly works and/or other relevant authorities.
4. Candidates should keep their answers as short and precise as possible.
5. Candidates shall be penalised for any forms of cheating and/or non-compliance with any of the instructions.

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Question One

Musa, Saina, and Hassan are employees of Punguza Gym as instructors. They have been having a problem with Sonia the manager, who recently served them letters of notice to terminate their employment. They hatched a plan to confront Sonia and “teach her a lesson”. They organized with Viola, the receptionist to inform them of Sonia’s movements. They were able to persuade Viola because she was unhappy with what she considered Sonia’s highhandedness. On 2nd January 2023, they went to gym at closing time and were let in by Viola before she left for home and waited until all the members had left. They knew that Sonia was usually the last to leave after going round to ensure everything was in place. With the help of Viola, they hid in one of the storage spaces in the male changing room and waited for Sonia. Unknown to them, Otis a member of the club had not left the gym and was in the changing room. As soon as Sonia came in, they descended on her with accusations of discrimination and unfairness a heated argument ensued which attracted the attention of Otis, who upon coming out and seeing the commotion rushed out and frantically tried to make a call on his phone. Saina rushed to him, grabbed the phone, and threw it out of the window smashing it into pieces. Annoyed at seeing his expensive iPhone smashed to pieces, Otis slapped Saina on the face leaving him bleeding profusely, he then ran out and alerted the security personnel outside the building. Meanwhile Musa pushed Sonia towards the toilet

whereupon she slipped and fell due to the wet floor and suffered serious head injuries. Hassan, on the other hand developed cold feet and felt that his religion did not allow him to attach a woman, so he had quietly slipped out as the melee commenced.

Musa and Saina were apprehended at the scene and after investigations Hassan and Viola have been arrested, Saina has also lodged a complaint based on the injuries sustained from Otis's slap. Unfortunately, on the 5th of January 2023, Sonia succumbed to the injuries and died.

You are the Advisor to the Prosecuting Counsel.

Write an advisory to the Prosecuting Counsel on the general elements of *mens rea* and *actus reus* of all the 4 arrested persons as well as any possible defences.

(30 Marks)

Question Two

There is no law governing the use of common law principles in criminal law in Kenya. However, Kenyan Courts have persistently resorted to common law in penalizing contempt of court and also as an interpretational tool. Yet, African customary law remains a 'no-go zone' in criminal accountability. *Anonymous*

Is this a fair assessment of the current state of the sources of law in Kenya?

(20 Marks)

Question Three

Gregory, Ann and Fancy plan to rob a Bank. Ann who is also the branch manager directs the security guard to give access to Gregory and Fancy on the agreed date. Unknown to Ann, her deputy manager at the bank overhears her instructions to the guard. The following day the three recruited John to drive the get-away Car. John drove Gregory and Fancy to the Bank and while Gregory and Fancy were in the process of robbing the Bank, John was overwhelmed by fear and he drove off leaving Gregory and Fancy behind. During the execution of the robbery, the tellers who were attending customers witnessed the whole ordeal while hiding under their desks. After the successful loot Gregory discovers that John had left and he calls his brother Sam who picks them up. While on the way Gregory briefs Sam of the robbery and the fact that they had managed to run away with Ksh. 1,000,000. Sam drives to his home for hide out. Jane, Sam's wife welcomes them home and prepares them a meal.

Police investigations later leads to the arrest of Gregory, Ann, her deputy bank manager, the bank security guards, Fancy, all the tellers on duty on that day, the customers that were in the banking hall, Sam and Jane.

Identify the various parties to the offence.

(20 Marks)

Question Four

As a pupil at the Office of the Director of Public Prosecution discuss the nature of offences committed in the following three scenarios.

- a) Batian and Zen are disgruntled employees. The two agree to destroy the premises of their former boss by Batian throwing a home-made petrol bomb into the factory on a public holiday and although it fails to detonate the fingerprints lead the police to Batian.
- b) JJ is aware that Betty often leaves her laptop in her car when she goes to the gym after work and he picks the lock but does not find the laptop although CCTV cameras record the act and he is arrested.
- c) GG Party leader incites his youth wingers to disrupt the political rally of their opponent KK party but in the mayhem three KK supporters are seriously injured and vehicles destroyed whereupon police arrest the GG party leader and all the youth wingers despite the fact that two of them had absconded.

(20 Marks)

Question Five

Pendabure lives in a village in Lamu county. He recently returned from Mombasa, where he had gone for treatment and rehabilitation for drug abuse. The area chief had taken him there after he turned violent and set his mother's house on fire after smoking *bhangi*. If the villagers had not acted fast to put out the fire, his elderly mother would have been burnt alive in the house. His mother pleaded with the Chief not to arrest him, but to take him for treatment since the drugs made him unstable. One late afternoon while taking his usual idle walks it began to rain heavily and he quickly took shelter in a nearby building. The building is the shop of one Mama Tofi who failed to open her shop on that day. Although the shop is locked Pendabure spots a hole in the wall at the corner of the shop. Three orphan boys, Toto a 7year old; Kijana, his 11 year old brother and Ndugu their 13 year old friend, are also sheltering by the shop, cold and hungry. They are homeless and afraid of Pendabure, who usually beats them for no reason. Pendabure figures that if he removes a few more bricks he can put the boys through the hole and gain access into the shop. MamaTofi had been aware of the security risk that this hole posed but decided she would repair it later. In her view, Lamu county was not prone to crime. It was about 6 p.m and darkness was beginning to set in, even as it continued to rain. Pendabure reckoned that they are unlikely to be spotted. He convinced the boys to get into the shop promising to take them home with him that night and give them a place to sleep. If they did as he said, he would not beat them. The boys got into the shop but Pendabure can only put his head into the shop and direct the boys on what items to pick and bring out to him. They give him several bottles of beer and a bottle of whiskey which he consumes and gets drunk. The boys take a loaf of bread and a bottle of milk each. They eat hungrily since they had not eaten any food in two days. Pendabure helps himself with goods

worth Kshs. 10,000. He staggers away from Mama Tofi's shop. Baba Kazi, a neighbouring shopkeeper spots him and attempts to stop him, asking him where he had bought the goods from, since all the shops were already closed. He attempted to take the bags away from Pendabure who shoves him aside. He hits Pendabure on his chest with his fist and Pendabure angrily hits him on the head with a bottle of beer and he falls down bleeding and unconscious. Pendabure goes home that evening, with Toto, Kijana and Ndugu by his side, carrying the bags of goodies from Mama Tofi's shop. Among the goods that he takes with him are several tubes of *Fair and Beauty* body cream and *Shollea* perfume sprays, which he gives to his girlfriend Surazuri. The next day, Mama Tofi and Baba Kazi reported the incident at Mbaraki police station. A few days later police arrest Surazuri, Pendabure, Toto, Kijana and Ndugu.

Supposing Pendabure, Surazuri, Toto, Kijana, mama Tofi, mama kazi, Nelson and Ndugu are all facing trial for the respective offences, what defences would be available to them?

(20 Marks)

Question Six

A 28 year old male Ph.D. student in criminology has been charged with breaking into a house and stabbing to death four undergraduate students (three females and one male) while they were asleep. The student has been studying the criminal mindset of serial killers and has been fascinated with how easily some of them get away with crimes. He himself has never committed a crime before. He did not steal anything from the house. Assume that the PhD student is in fact and in law guilty.

In another scenario, A brutally kills his lover and recruits others to help him dispose the body in a distant forested area.

In both scenarios, answer the questions below:

- a) What criminological theory(ies) can you advance to explain why they committed the crimes?
- b) What punishment would you recommend for the perpetrators, and why based on your understanding of the philosophy of punishment?
- c) What policy initiatives would you advance based on the criminological theory (ies) you discuss above, to prevent a similar crime from occurring?

(20 Marks)