

COURSE CODE: L101 (S) 2005

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATIONS, JULY 2005

TITLE OF PAPER : **LEGAL SYSTEMS AND METHODS**

COURSE CODE : **L 101**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **1) THE PAPER CONSISTS OF SIX QUESTIONS.**

2) ANSWER ANY FOUR QUESTIONS.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION 1

- (a) As you preside over a court hearing, one advocate quotes D. Mbirizi's Criminal Law (published by IDE, UNISWA) in support of a point of law. What would be your legal response? Explain. [5 marks]
- (b) How, if at all, would your response differ if the said Advocate quoted a case from a well-known South African case book? [5 marks]
- (c) At a hearing over which you are the presiding magistrate, the prosecution cites Schreiner P., in Annah L. Mathenjwa V.R., 1970-76 SLR 25, at 29, to support the position that the doctrine of versari in re illicita is generally applicable in Swaziland.

Counsel for the defence, on the other hand, cites the case of S v Bernadus, 1965 (3) SA 287(A), to argue that the versari doctrine is no longer law in South Africa; and that, consequently, it [versari] is no longer applicable in Swaziland.

Spell out in detail, and with reasons, what your ruling over the matter would be. DO NOT forget to refer to all relevant authorities. [15 marks]

[25 MARKS]

QUESTION 2

- (a) Highlight the content of the Pleadings Stage in civil proceedings. [10 marks]
- (b) Indicate two functions that this (Pleadings) stage serves in civil proceedings. [5 marks]
- (c) Briefly explain why a person who has a case to answer at the close of the prosecution's case may nevertheless be acquitted at the end of the trial. [10 marks]

[25 MARKS]

QUESTION 3

- (a) Using illustrations and/or specific cases, distinguish between ratio decidendi and obiter dictum. [10 marks]
- (b) Under what circumstances, if at all, may an obiter dictum be useful to a judge in resolving a legal issue? [10 marks]
- (c) Under what circumstances, if at all, may a non-legal source be of use to a lawyer qua lawyer? [5 marks]

[25 MARKS]

QUESTION 4

- (a) Explain the meaning of, and necessity for, delegated legislation, and state the pre-requisites for its validity. [10 marks]
- (b) It has been said that legal dualism is rooted in Swaziland's constitutional framework. Do you agree? Explain. [15 marks]
- [25 MARKS]

QUESTION 5

- (a) A client tells you that he raped and killed decedent in the case in which he wants you to defend him. He also tells you he will plead "not guilty". Would you defend him? Explain. [8 marks]
- (b) Referring closely to relevant sources, critically discuss the rationale behind the two-tier (B.A. law)/LL.B programme of legal education at UNISWA. [8 marks]
- (c) Briefly state the philosophy/rationale behind the new (five-year) law programme (at UNISWA) and indicate to what extent, if at all, it is an improvement to the old programme. [9 marks]
- [25 MARKS]

QUESTION 6

- Explain and critically discuss the Hart-Devlin debate on law and morality. [25 MARKS]