

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**EXAMINATION PAPER MAY 2005**

**TITLE OF PAPER** : **ROMAN LAW**

**COURSE CODE** : **L102**

**TIME ALLOWED** : **3 HOURS**

**MARKS ALLOCATED** : **100 MARKS**

**INSTRUCTIONS** : **ANSWER FIVE QUESTIONS. ANSWER AT LEAST ONE QUESTION, BUT NOT MORE THAN TWO FROM EACH SECTION.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR**

**[TURN OVER]**

**SECTION A: HISTORY, LAW OF PERSONS AND LAW OF SUCCESSION**  
**FROM THIS SECTION YOU MUST ANSWER AT LEAST ONE QUESTION, BUT YOU**  
**MAY NOT ANSWER MORE THAN TWO QUESTIONS**

**QUESTION 1**

- (a) Write short notes on the main periods and dates in the history of Rome. (10)
- (b) What do the following concepts mean?
- (i) *patria potestas* (2)
- (ii) *infans* (1)
- (iii) status (2)
- (c) Briefly discuss the legitimate portion (*legitimatio portio*). (5)
- [20]**

**QUESTION 2**

- (b) Write a short composition on the codification work of Justinian (527-565). (10)
- (b) Name the characteristics of a will. (4)
- (c) Distinguish the different types of procedure recognised in Roman law. (6)
- [20]**

**QUESTION 3**

- (a) Discuss the role of the Praetor in the development of Roman law. (10)
- (b) Mention the three factors which influenced a person's status in Roman law. (3)
- (c) Children normally present two problems to a legal system. Briefly refer to these. (2)
- (d) What purposes do the formalities of a will serve? (3)
- (e) What does emancipation mean? (2)
- [20]**

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**SECTION B: LAW OF PROPERTY**

FROM THIS SECTION YOU MUST ANSWER AT LEAST ONE QUESTION, BUT YOU MAY NOT ANSWER MORE THAN TWO QUESTIONS

**QUESTION 4**

- (a) Give an example of each of the following:
- (i) *res mancipi*
  - (ii) *res nec mancipi*
  - (iii) movable thing
  - (iv) incorporeal thing
  - (v) claim (5)
- (b) Discuss Roman law ownership with reference to its nature, its inviolability and its entitlements. (10)
- (c) Define appropriation. (5)
- [20]

**QUESTION 5**

- (a) Briefly discuss the relationship between possession and ownership in Roman law. (5)
- (b) Name and briefly discuss the requirements for the transfer of ownership. (6)
- (c) Define a personal servitude. (7)
- (d) What are the disadvantages of the Roman institution of *fiducia* (fiduciary security)? (2)
- [20]

**QUESTION 6**

- (a) Write short notes on the distinction between contract and conveyance. (5)
- (b) Explain the operation of delivery with the long hand (*traditio longa manu*) and illustrate this by way of an example. (5)
- (c) Q and R have an agreement with S in terms of which he can use the road (servitude of right of way) free of charge for as long as he lives. S dies and his wife wishes to use the road. Q and R refuse. Briefly advise S's wife. (2)
- (d) Discuss the operation of land servitudes. Illustrate your discussion with an appropriate example. (8)
- [20]

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**QUESTION 7**

- (a) Mention and briefly discuss the three types of possession in Roman law. (10)  
 (b) Distinguish between original and derivative methods of acquisition of ownership. (5)  
 (c) Discuss pledge (*pignus*) as a form of real security. (5)  
**[20]**

**SECTION C: LAW OF OBLIGATIONS**

**FROM THIS SECTION YOU MUST ANSWER AT LEAST ONE QUESTION, BUT YOU MAY NOT ANSWER MORE THAN TWO QUESTIONS**

**QUESTION 8**

Briefly explain the following concepts:

- (a) cession (5)  
 (b) *emptio spei* (sale of an expectation) and *emptio rei speratae* (sale of an expected thing) (5)  
 (c) *iniuria* (2)  
 (d) *negotiorum gestio* (3)  
 (e) law of delict and law of delicts (5)  
**[20]**

**QUESTION 9**

- (a) Distinguish between unilateral and bilateral contracts. (5)  
 (b) Briefly discuss the following aspects of the Roman law of sale:  
     (i) passing of title (5)  
     (ii) passing of risk (5)  
 (c) Define mandate. (5)  
**[20]**

**QUESTION 10**

- (a) Briefly discuss the following aspects of the Roman law of sale:  
     (i) warranty against eviction (5)  
     (ii) warranty against latent defects (5)  
 (b) Discuss the proceedings which could be instituted against a thief in Roman law. (10)  
**[20]**

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