

Course Code: L104 (M) 2004

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

TITLE OF PAPER : **PRINCIPLES OF SWAZI LAW AND CUSTOM**

COURSE CODE : **L104**

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

INSTRUCTIONS : **(1) ANSWER ANY FOUR (4) QUESTIONS.**
(2) ALL QUESTIONS CARRY EQUAL MARKS.
(3) ENSURE THAT YOUR ANSWER IS LEGIBLE AND COHERENT.

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QUESTION 1

The draft constitution seeks to alter existing laws in the country by requiring that all laws should comply with the constitution. Discuss the impact of the constitution on customary law.

QUESTION 2

With the aid of decided cases, illustrate whether or not there is a distinction between trade usage and a custom.

QUESTION 3

The Swazi Administration Order No. 6.1998 has been criticised as a piece of legislation that looks down upon our judicial system and constantly violates fundamental human rights in Swaziland. As a result the Court of Appeal declared this piece of legislation null and void. Critically discuss the court's ruling in the light of the above statement.

QUESTION 4

- (a) Distinguish between intestate succession and testate succession. [15]
- (b) What are the formalities for executing a will. [10]

QUESTION 5

Oscar and Fikile were married in 2000 by Swazi Law and Custom. In 2003 they decided to be married in accordance with The Marriage Act No. 47 of 1964. In 2005 Oscar entered into a marriage under Swazi Law and Custom with one Teresa.

Discuss and cite any statutory or case law authorities to support your opinion whether:

- (a) The marriage of Oscar and Fikie of 2003 is valid or not.
- (b) Fikile has any action against Teresa or Oscar or both and in which system of courts.

QUESTION 6

The Repugnancy clause is a powerful weapon at the disposal of the courts, not only because it could undermine the recognition of customary law but also because it could, unless confined to a narrow area, lead to confusion and arbitrary decisions.

Using decided cases critically analyse the repugnancy provision as stated above.

QUESTION 7

Swaziland has a dual legal system. Explain what this means and show how this dual system arose.