

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2006

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 (COMPLETE) QUESTIONS.**

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QUESTION 1

- (a) Referring closely to Donoghue v Stevenson, explain and critically discuss the process of discerning the ratio decidendi from a case. [20 marks]
- (b) What is an obiter dictum? [5 marks]

QUESTION 2

Critically discuss the law and practice appertaining to independence of the Judiciary and the Bar in Swaziland. [25 marks]

QUESTION 3

“Legal dualism in Swaziland reflects a successful attempt to merge two different systems of law”.

Do you agree? Explain. [25 marks]

QUESTION 4

- (a) As you preside over a court hearing, one advocate quotes an article from the South African Law Journal by Professor P.M.A. Hunt in support of a point of Law in Criminal Law. What would be your legal response? Explain. [5 marks]
- (b) How, if at all, would your response differ if the said advocate quoted from a case in a well-known South African casebook? [5 marks]
- (c) At a hearing over which you are the presiding officer, 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287(A), to argue that the versari doctrine is no longer law in South Africa; and, that, consequently, it (versari) is no longer applicable in Swaziland.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]

QUESTION 5

- (a) Briefly highlight the content of the Pleadings stage in civil proceedings. [10 marks]
- (b) Indicate two major functions that this (pleadings) stage serves in civil proceedings. [5 marks]
- (c) Briefly distinguish between an appeal and a review. [5 marks]
- (d) What is meant by a prima facie case in a criminal trial. [5 marks]

QUESTION 6

- (a) The Law Society of Swaziland is an integral regulatory organ of the legal profession. Discuss this statement making reference to relevant provisions of the Legal Practitioners Act, 1964, as amended. [15 marks]
- (b) Distinguish between Civil and Criminal trials. [10 marks]