

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

FINAL EXAMINATION PAPER, MAY 2006

**TITLE OF PAPER : THE GENERAL PRINCIPLES OF SWAZI
LAW & CUSTOM**

COURSE CODE : L104

TIME ALLOWED : THREE (3) HOURS

**INSTRUCTIONS: (1) ALL FOUR (4) QUESTIONS ARE
COMPULSORY**

**(2) MARKS FOR QUESTIONS OR PARTS OF A
QUESTION ARE SHOWN IN BRACKETS.**

**THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

QUESTION 1

A. What were the consequences of the reception Roman-Dutch Common Law in Swaziland?

[15]

B. After the reception of Roman-Dutch Common Law what became the position of the indigenous legal system.

[10]

(25 marks)

QUESTION 2

Section 11 of the Swazi Courts Act No 80/1950 provides, inter alia:

“Swazi courts are to apply the Swazi Law and Custom prevailing in Swaziland so far as it is not repugnant to natural justice; morality or inconsistent with the provision of any law in force in Swaziland”.

Briefly account for the history leading to the enactment of this clause and then proceed to discuss what it does entail.

(25 marks)

QUESTION 3

Sibonangaye Sihlongonyane and Dorcas Sihlongonyane are husband and wife. In 1970 they were married in accordance with Swazi Law and Custom in Phuzamoya which happens to be Sibonangaye's parental place. In 1990 the couple moved to Manzini owing to the fact that Sibonangaye had secured employment in one of the textile factories in Matsapa. As a result of modernized thinking and the alleged glossy benefits of a civil marriage, Dorcas persuaded her husband that they contract a civil rites marriage in 1995 as her present to celebrate their 25th anniversary of their customary rites marriage. Sibonangaye was convinced and the marriage was accordingly solemnized. At the beginning of year 2000 Dorcas committed adultery and naturally her husband was so incensed about it. He filed a claim for damages from the other man arising out of the alleged adultery with his wife in the Swazi Court. Dorcas defends this claim and argues that after the civil rites marriage, Swazi Courts have no jurisdiction to entertain this claim because the subsequent civil rites marriage annulled the previously contracted customary law marriage, hence the latter marriage ceased to exist in 1995. She wants this matter argued in the Common Law courts.

Who is right and on what basis? Which legal system determines the consequences of their marriage? Your answer must be supported with legislative authority as well as decided cases.

(25 marks)

QUESTION 4

The Wills Act No 12 of 1955 regulates the execution of a will and it prescribes for two kinds of wills; the ordinary will and the soldiers' will. Over and above the Act spells out the formalities for the execution of a will, without which the same may never be valid. What are these formalities? Enumerate and briefly discuss them.

(25 marks)