

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

DEPARTMENT OF LAW

FINAL EXAMINATION, MAY 2007

TITLE PAPER : LEGAL SYSTEM AND METHODS

COURSE CODE : DL 011

TIME ALLOWED : THREE (3) HOURS

- INSTRUCTIONS :**
- 1. ANSWER QUESTION ONE WHICH IS COMPULSORY, AND ANY OTHER THREE QUESTIONS OF YOUR CHOICE.**
 - 2. MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS**

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

SECTION A

QUESTION ONE

- (A) The English judge, Sir James Fitzjames Stephen, contended in his work *Liberty, Equality, Fraternity* (1873) that the criminal law may be used to enforce the standards of morality. These sentiments resounded in the English judgment of *Shaw v Director of Public Prosecutions* (1962) ALL ER 446:

“In the sphere of criminal law...there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the State...to superintend those offences which are prejudicial to the public welfare. Such occasions will be rare, for parliament has not been slow to legislate when attention has been sufficiently aroused. But gaps remain and will always remain since no one can foresee every way in which the wickedness of man may disrupt the order of society.”

Critically discuss this judicial sentiment with the aid of case law and/or examples. (15)

- (B) John Gomorrah, an adult Swazi male of Kaphunga, is charged with the offence of bestiality (a very old criminal law) in that he is alleged to have unlawfully and intentionally had multiple sexual intercourse with his pet goat, Zinyane, at his farm. The evidence submitted by the prosecution is that the neighbour would often hear the odd and seemingly painful screams of an animal at night. One night the neighbour's curiosity got the better of her and she decided to investigate what the commotion was about and, was alarmed to witness Mr Gomorrah on top of his goat in the throes of passion. She immediately calls for the police who thereafter arrest him.

At the trial, his attorney argues, *inter alia*, that unlike the offence of murder Mr Gomorrah did not harm anyone in his actions and that in any event the goat was his and he could do what he wished with it as the owner.

In your considered view, what possible line of arguments would both the prosecution and the defence advance to support their respective cases. (10)

SECTION B

QUESTION TWO

Highlight and critically discuss the content of the literal meaning, golden and mischief "rules" of statutory interpretation. (25)

QUESTION THREE

- (a) Why is litigation not always the most appropriate method of resolving disputes? (10)
- (b) Briefly outline and discuss three methods of resolving legal disputes without resorting to litigation. (15)

QUESTION FOUR

Write short notes on the following;

- (a) Distinguish between an attorney and an advocate. (5)
- (b) Differentiate between the Attorney-General and the Director of Public Prosecutions. (5)
- (c) Carefully distinguish between the onus of proof and standard of proof (5)
- (d) What is meant by formal justice as opposed to substantive justice (5)
- (e) Critically explain the notion that the king is 'above the law' (5)

QUESTION FIVE

In *Rylands v Fletcher*, the facts were as follows; X had a reservoir built on his land. X had employed Y to build it. Y was negligent in building the reservoir. X was not negligent. As a result of the negligent building, water escaped from the reservoir and damaged Z's property. Z sued X for damages flowing from Y's negligence.

In relation to forming the *ratio decidendi*, how did the court settle this case. Also, explain what the effect of having few material facts is. (25)

QUESTION SIX

Clearly outline and explain the Five Postulates of Justice. (25)

QUESTION SEVEN

Define the structure of the courts in Swaziland starting from the lowest to the highest in the hierarchy. Also, state the functions of each of them. (25)