

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2007

TITLE OF PAPER : **LEGAL SYSTEMS AND METHODS**

COURSE CODE : **L 101**

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

INSTRUCTIONS :
a) **THE PAPER CONSISTS OF SIX QUESTIONS.**
b) **ANSWER ANY FOUR QUESTIONS.**

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QUESTION 1

It has been suggested that the majority judgement on law and morality in the case of Shaw v DPP, [1961] 2 ALL ER.446, is totally unacceptable.

Do you agree? Explain. [25 marks]

QUESTION 2

- (a) Schreiner P. stated in Mathenjwa v R., 1970-76 SLR 25, that the courts in Swaziland are only bound to follow what they consider to be the law in Swaziland. In practice, however, the courts in Swaziland often cite and use South African cases without bothering to consider whether or not they are binding in Swaziland.

Against that background, and referring to relevant authority, explain and critically discuss the content of the law applicable in Swaziland. [15 marks]

- (b) Why, in your view, should we distinguish between primary and secondary sources of law? [5 marks]
- (c) When may a non-legal source be of use to a lawyer? [5 marks]

QUESTION 3

Highlight the history of legal education in Swaziland, and state with reasons, whether in your view, the new five-year LL.B. is an improvement on the earlier six-year B.A. - LL.B programme, at the University of Swaziland.

[25 marks]

QUESTION 4

- a) Indicate three functions of the Pleadings Stage in civil proceedings. [5 marks]
- b) Outline the content of the Pleadings Stage in Civil proceedings. [15 marks]
- c) What is meant by a *prima facie* case in Criminal proceedings? [5 marks]

QUESTION 5

- a) W.N. Hohfeld argues that the traditional legal pattern of rights and duties conceals a number of differing situations which need to be carefully distinguished for the purpose of legal analysis.

Do you agree? Explain, referring closely to examples and illustrations. [15 marks]

- b) Hahlo and Kahn assert that the distinction between *jura in rem* and *jura in personam* is of considerable practical significance.

With the aid of examples and illustrations, critically evaluate the assertion. [10 marks]

QUESTION 6

Distinguish between

- (a) Common law and civil law; [5 marks]
(b) Capacity and power; [5 marks]
(c) Appeal and review; [5 marks]
(d) Personal rights and personality rights; [5 marks]
(e) Attorney and advocate. [5 marks]