

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

EXAMINATION PAPER MAY 2007

TITLE OF PAPER : **ROMAN LAW**

COURSE CODE : **L102**

TIME ALLOWED : **3 HOURS**

MARKS ALLOCATED : **100 MARKS**

INSTRUCTIONS : **ANSWER FIVE QUESTIONS.
ANSWER AT LEAST ONE
QUESTION FROM EACH
SECTION.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED
BY THE INVIGILATOR**

[TURN OVER]

SECTION A: HISTORY, LAW OF PERSONS AND LAW OF SUCCESSION
FROM THIS SECTION YOU MUST ANSWER AT LEAST ONE QUESTION

QUESTION 1

- (a) Why is Roman law still relevant in Swaziland of today? (5)
- (b) What do the following concepts mean? (4)
- (i) reception (2)
 - (ii) *patria potestas* (2)
 - (iii) status (2)
- (c) Discuss the role of the jurists in the development of the law. (7)
- [20]

QUESTION 2

- (a) Mention and briefly discuss the four sections of the *Corpus Iuris Civilis*. (8)
- (b) Define universal succession. (5)
- (c) Briefly describe the following: (3)
- (i) legitimate portion (3)
 - (ii) codicil (2)
 - (iii) action (*actio*) and defence (*exceptio*) (2)
- [20]

SECTION B: LAW OF PROPERTY
FROM THIS SECTION YOU MUST ANSWER AT LEAST ONE QUESTION

QUESTION 3

- (a) Give an example of each of the following: (3)
- (i) *res nec mancipi*
 - (ii) incorporeal thing
 - (iii) claim
- (b) Mention and briefly discuss three types of possession in Roman law. (6)
- (c) Define ownership with reference to its inherent nature. (5)
- (d) Define constructive delivery with reference to the three factual situations and give an example of a relevant form of delivery under each situation. (6)
- [20]

QUESTION 4

- (a) Write short notes on the distinction between contract and conveyance. (5)
- (b) There is a windmill on the farm of X and Y, which they no longer use. S purchases it from them. S's father, X, takes him to the windmill and shows it to him. He says: "Here is the windmill. You must come and dismantle it and take it away." S undertakes to do this as soon as he has the time. Thereafter X and Y sell the windmill to Z who dismantles it and takes it away. S becomes insolvent and the curator of the insolvent estate claims that the windmill is part of the insolvent estate. Z denies this and argues that he is the owner of the windmill. Will X succeed in proving his ownership? Substantiate your answer with reference to a modern case dealing with this issue. (5)
- (c) Briefly discuss *hypotheca* (hypothec). (5)
- (d) Discuss the operation of personal servitudes with reference to an appropriate example. (5)
- [20]

SECTION C: LAW OF OBLIGATIONS
FROM THIS SECTION YOU MUST ANSWER AT LEAST ONE QUESTION

QUESTION 5

- (a) Briefly explain the following concepts:
- (i) bilateral contracts (2)
 - (ii) *emptio spei* (sale of an expectation) and *emptio rei speratae* (sale of an expected thing) (4)
 - (iii) *error in negotio* (2)
 - (iv) warranty against eviction (5)
- (b) Discuss the proceedings that could be instituted against a thief in Roman law. (7)
- [20]

QUESTION 6

- (a) Distinguish between a crime and a delict. (4)
- (b) Discuss the essential elements of Aquilian liability in Roman law and refer to a modern case in which these principles were applied. (10)
- (c) Mention and briefly distinguish between the three forms of *locatio conductio*. (6)
- [20]

TOTAL: 100 MARKS