

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATIONS, MAY 2008**

**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 QUESTIONS.**

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

**QUESTION 1**

Referring to learned literature and illustrations, explain and critically discuss the Hart-Devlin debate on law and morality.

[25 MARKS]

**QUESTION 2**

It has been said that fair process is more of an ideal than a reality in Swaziland. Do you agree? Explain, referring closely to the relevant provisions, cases and illustrations.

[25 MARKS]

**QUESTION 3**

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

With the aid of illustrations, critically evaluate the assertion.

[15 marks]

b) Distinguish between:

(i) capacity and power

[2 marks]

(ii) personal rights and personality rights

[2 marks]

(iii) appeal and review

[2 marks]

(iv) under what circumstances may a non-legal source be of use to a lawyer *qua* lawyer?

[4 marks]

[25 MARKS]

**QUESTION 4**

“Judges do not, and must not, in fact, make law”.

By a first-year LL.B. student at UNISWA.

Referring to illustrations and decided cases, critically discuss the statement.

[25 MARKS]

**QUESTION 5**

It has been suggested that legal dualism in criminal proceedings leads to injustice. Referring to authority, critically discuss the suggestion and highlight the necessary reforms.

[25 MARKS]

**QUESTION 6**

- (a) Highlight five factors that determine the degree of persuasiveness of an authority from a foreign jurisdiction. [6 marks]
- (b) Under what circumstances, if at all, may an obiter dictum be useful to a judge in resolving a legal issue? [7 marks]
- (c) Distinguish between Attorney and Advocate. [6 marks]
- (d) Should counsel defend an accused who admits he committed the act which is the basis of a crime? Explain. [6 marks]

**[25 MARKS]**