

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATIONS, JULY 2008**

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

**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**

- (a) Referring to illustrations and or decided cases, explain the meaning of ratio decidendi, and distinguish it from obiter dictum. [9 marks]
- (b) What is meant by stare decisis, and how does it operate in Swaziland? [8 marks]
- (c) Highlight and discuss the advantages and disadvantages of stare decisis. [8 marks]  
[25 MARKS]

**QUESTION 2**

B. Khumalo argues that legal dualism in Swaziland is a product of the country's constitutional framework.

How far is this statement true in the light of the new constitution? Explain.

[25 MARKS]

**QUESTION 3**

Explain and critically discuss the law and practice pertaining to independence of the Judiciary and the Bar in Swaziland.

[25 MARKS]

**QUESTION 4**

- (a) Explain the meaning of the statement that "real rights are absolute ... but personal rights are relative." [10 MARKS]
- (b) Explain the meaning, purpose and content of motion proceedings. [10 MARKS]
- (c) Distinguish between the onus and standard of proof in civil and criminal proceedings. [5 MARKS]

**QUESTION 5**

"The issue before the House is not whether the appellants' conduct is morally right, but whether it is properly charged under the 1861 Act.... I do not propose to invite your Lordships' House to endorse it as morally acceptable .... nor in the least do I suggest that ethical pronouncements are meaningless ... that sadism is praiseworthy, or that new opinions on sexual morality are necessarily

superior to the old .... what I do say is that these are questions of private morality; that the standards by which they fall to be judged are not those of the ... law; ... the individual must enforce them upon himself according to his own moral standards ...”

(From Mustill LJ in *R v Brown*, [1993] 2 All ER 75, at 115-116).

Discuss the quotation in the context of the Hart-Devlin debate on law and morality.

**[25 MARKS]**

### **QUESTION 6**

- (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 with the aid of examples and illustrations.

**[15 MARKS]**

- (b) Distinguish between formal justice and substantial justice. How may the latter be determined?

**[5 MARKS]**

- (c) Explain the meaning of common law.

**[5 MARKS]**