

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2009

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 (FULL) QUESTIONS.

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

QUESTION 1

“Unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business...”

(The Wolfenden Committee Report, 1957)

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 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) What is meant by a prima facie case in criminal proceedings? (5 marks)

[25 MARKS]

QUESTION 3

- (a) Using illustrations and/or specific cases, distinguish between ratio decidendi and obiter dictum. (15 marks)

- (b) To what extent, if at all, does legal dualism in Criminal Proceedings lead to injustice? Explain. (10 marks)

[25 MARKS]

QUESTION 4

- (a) Explain why litigation is not always the best way of resolving legal disputes, and highlight three alternative methods of resolving the same. (8 marks)
- (b) Briefly explain the purpose of the pleadings stage in action proceedings. (5 marks)
- (c) Outline the content of action proceedings. (12 marks)

[25 MARKS]

QUESTION 5

- (a) Referring to learned literature, indicate and explain the principal differences between positivism and naturalism. (10 marks)
- (b) Why and how may an otherwise applicable precedent be avoided by a court? (10 marks)
- (c) What requirements must be satisfied for custom to be recognized as a source of law? (5 marks)
- [25 MARKS]**

QUESTION 6

- (a) Explain the meaning of, and necessity for, delegated legislation, and state the pre-requisites for its validity. (10 marks)
- (b) It has been said that while real rights are absolute and in rem, personal rights are relative. Do you agree? Explain, referring to at least three specific illustrations. (15 marks)
- [25 MARKS]**