

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

**FIRST SEMESTER SUPPLEMENTARY EXAMINATION, JULY 2010**

**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 GRANTED BY THE INVIGILATOR**

### **QUESTION 1**

“Whatever is contra bonos mores et decorum the principles of our law prohibit, and the King’s Court as the general censor and guardian of public morals is bound to restrain and punish”.

(Jones v Randall, (1774), 1 Cowp. 17, cited in Shaw v DPP, [1961] 2 All ER 446).

Explain and critically discuss the quotation in the context of Swaziland.

(25 MARKS)

### **QUESTION 2**

Explain and discuss the content of legal dualism in Swaziland’s criminal proceedings, and also suggest and defend three possible reforms therefor.

(25 MARKS)

### **QUESTION 3**

(a) S.3(1) of the General Law and Administration Proclamation 4/1907 states:

“The Roman-Dutch common law, save in so far as the same has been heretofore or may from time to time hereafter be modified by statute, shall be law in Swaziland”.

Referring to authority, explain and discuss the provision against the background of the “Reception Provisions” of Botswana and Lesotho.

(15 marks)

(b) 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 to specific examples and illustrations.

(10 marks)

[TOTAL: 25 MARKS]

### **QUESTION 4**

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

(15 marks)

(b) Referring to illustrations, distinguish between personal rights and real rights.

(10 marks)

[TOTAL: 25 MARKS]

### **QUESTION 5**

- (a) Referring to illustrations and or cases, explain the meaning of, and distinction between, ratio decidendi and obiter dictum. (15 marks)
- (b) Counsel finds that the only available authorities in respect of the case he is handling are from two Roman-Dutch law writers, which, however, also totally disagree with each other.

Referring to authority, explain how counsel should resolve the matter. (5 marks)

- (c) Distinguish civil from criminal proceedings. (5 marks)

### **QUESTION 6**

- (a) As you preside over a court hearing, one Advocate quotes B. Khumalo's Criminal Procedure (published by IDE, UNISWA) in support of a point of law. What would be your legal response? Explain. (5 marks)
- (b) How, if at all, would your response differ if the said Advocate quoted a case from a well-known South African case book? (5 marks)
- (c) At a hearing over which you are the presiding magistrate, the prosecution cites Schreiner P., in Annah L. Mathenjwa v R, 1970-76 SLR 25, at 29, to support the position that the doctrine of versari in re illicita is generally applicable in Swaziland.

Counsel for the defence, on the other hand, cites the case of S v Bernadus, 1965(3) SA 287(A), to argue that the versari doctrine is no longer law in South Africa; and that, consequently, it [versari] is no longer applicable in Swaziland.

Spell out in detail, and with reasons, what your ruling over the matter would be. DO NOT forget to refer to all relevant authorities. (15 marks)