

UNIVERSITY OF SWAZILAND  
INSTITUTE OF DISTANCE EDUCATION  
DEPARTMENT OF LAW  
MAIN EXAMINATION PAPER, NOVEMBER 2010

TITLE OF PAPER : LEGAL SYSTEMS AND METHOD  
COURSE CODE : IDE - DL011  
TIME ALLOCATION : THREE (3) HOURS  
INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS  
TOTAL MARKS : 100

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THE INVIGILATOR

**QUESTION 1**

- a) With reference to the Social Contract theory discuss the necessity of the law. [15 marks]
- b) State the three (3) principal differences between law and morality. [7 marks]
- c) List three personal qualities that a lawyer must possess. [3 marks]

**QUESTION 2**

- a) Name four primary functions of the law. [8 marks]
- b) List the four (4) postulates of justice. [8 marks]
- c) Briefly discuss one (1) of the postulates of justice. [9 marks]

**QUESTION 3**

- a) The two main branches of the law are public international law and domestic or national law. Define the two main branches of law. [5 marks]
- b) Briefly state the distinction between public and private law. [5 marks]
- c) According to Hahlo and Kahn, The South African System and Its Background, common law means three things to modern lawyers. State the three meanings of common law to modern lawyers. [9 marks]
- d) State three (3) examples of alternative dispute resolution methods to litigation. [6 marks]

**QUESTION 4**

- a) Name two (2) subordinate courts in Swaziland. [2 marks]
- b) Name the standard of proof in the following court proceedings:
  - (i) Civil proceedings; [2 marks]
  - (ii) Criminal proceedings. [2 marks]
- c) Who has the burden of proof in criminal proceedings? [3 marks]
- d) List the three (3) pleadings exchanged by litigants in application proceedings.

[10 marks]

- e) Name the parties involved in the following court proceedings:
- (i) Criminal proceedings; [2 marks]
  - (ii) Action proceedings; [2 marks]
  - (iii) Motion proceedings. [2 marks]

**QUESTION 5**

- a) List the four primary sources of law in Swaziland. [8 marks]
- b) When does a statute cease to exist? [2 marks]
- c) Briefly discuss four (4) methods in which a judge may avoid the doctrine of judicial precedent. [15 marks]

**QUESTION 6**

- a) With reference to the case of *Van Breda & Others v Jacobs & Others 1921 AD 330* what are the four elements that must be established in order for a court to hold that a particular custom exists? [5 marks]
- b) Discuss the reception of Roman Dutch law in Swaziland and its consequences. [20 marks]