

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

**SUPPLEMENTARY EXAMINATIONS, JULY 2011**

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

**COURSE CODE** : **L 101**

**TIME ALLOWED** : **THREE (3) HOURS**

**INSTRUCTIONS** : **A) THE PAPER CONSISTS OF SIX QUESTIONS.**

**B) ANSWER ANY FOUR QUESTIONS.**

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**QUESTION 1**

Hahlo and Kahn argue that it is only in a secondary sense that judges make law, fashioning it, as far as possible, out of materials at hand.

Referring closely to the legal reasoning in Donoghue v Stevenson, [2932] All ER 1, explain and critically consider the argument.

[25 MARKS]

**QUESTION 2**

(a) It has been suggested that legal dualism in Swaziland is a product of the country's Constitutional framework? Do you agree? Explain. (10 marks)

(b) To what extent, if at all, does legal dualism in criminal proceedings lead to injustice? Explain. (15 marks)

[25 MARKS]

**QUESTION 3**

(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 4**

(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 common law 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 5**

“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 Coup, 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 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]

Prof. J. Baloro  
(~~Commissioner~~)  
2/08/11