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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2011

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 (FULL) QUESTIONS.**

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

QUESTION 1

Glanville Williams states that the ratio decidendi of a case is not necessarily the rule of law stated by the Judge presiding over a case.

Do you agree? Explain, referring to the reasoning in Donoghue v Stevenson, [1932] All ER 1 and, or in Wilkinson v Downton, [1987] 2QB57.

[25 MARKS]

QUESTION 2

(a) Referring to authority, explain and critically discuss the law relating to independence of the Judiciary in Swaziland.

(15 marks)

(b) Using illustrations, distinguish between formal justice and substantial justice.

(10 marks)

[25 MARKS]

QUESTION 3

(a) Referring to specific examples, critically discuss the meaning of theory, and explain the extent to which legal practitioners in Swaziland need legal theory, if at all.

(15 marks)

(b) Of what significance, if at all, is the Paul-Twining Report (August, 1971), in the history of legal education in Swaziland?

(10 marks)

[25 MARKS]

QUESTION 4

“[T]he... Court ...[is] the custos morum of the people and --- there’s in that court residual power, where no statute has yet intervened to supercede the common law, to superintend those offences which are prejudicial to public welfare. Such occasions will be rare, for parliament has not been slow to legislate when attention has been sufficiently aroused. But gaps remain, and will always remain, since no one can foresee every way in which the wickedness of man may disrupt the order of society”.

Shaw v DPP, [1961] 2 All ER446, at 452

To what extent, in your view, is this reasoning persuasive in the socio-economic and legal environment of Swaziland?

[25 MARKS]

QUESTION 5

- (a) To what extent, if at all, is legal dualism in Swaziland a product of the country's constitutional framework? (10 marks)
- (b) R.T. Nhlapo suggests that legal dualism in Swaziland leads to differential justice.

Do you agree? Explain, referring to relevant authority. (15 marks)
[25 MARKS]

QUESTION 6

- (a) Referring closely to the interpretation of the Reception Provisions of Botswana and Lesotho, explain and critically discuss the content of Swaziland's S.3 of the General Law and Administration Proclamation 4, 1907. (15 marks)
- (b) Highlight the content of Action Proceedings. (10 marks)
[25 MARKS]