

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

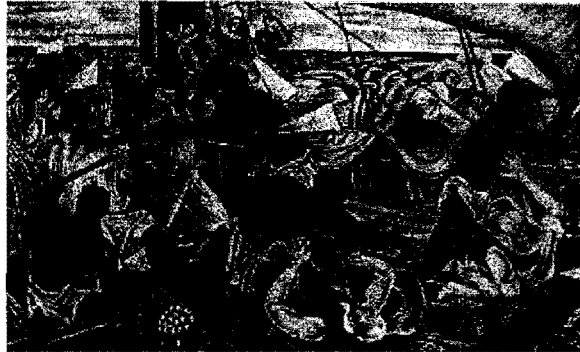
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**EXAMINATION PAPER, 2011**  
**(MAIN)**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>ROMAN LAW</b>
<b>COURSE CODE</b>	<b>:</b>	<b>L102</b>
<b>DURATION</b>	<b>:</b>	<b>3 HOURS</b>
<b>MARKS ALLOCATED</b>	<b>:</b>	<b>100 MARKS</b>
<b>INSTRUCTIONS</b>	<b>:</b>	<b>ANSWER QUESTION <u>ONE</u></b> <b>WHICH IS COMPULSORY, &amp;</b> <b>THREE (3) QUESTIONS</b> <b>OF YOUR CHOICE.</b>

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## QUESTION 1



Two US sea captains, *Fordham and Henry Green*, were shooting birds among the dunes at the eastern tip of Long Island, USA on the morning of August 26, 1839, when they were startled to encounter *four black men* wearing only blankets. Once the blacks were assured through sign language that they were not in slaveholding country, they led Fordham and Green to a point in the dunes where they could see a black schooner, flagless with its sails in tatters, sitting at anchor a mile or so from the beach. Another smaller boat was on the beach, guarded by more black men, many of whom were wearing *necklaces and bracelets of gold doubloons*. One of the black men, who appeared to be the leader of the group, told Fordham and Green that there were *two trunks full of gold* aboard the schooner, and that they would be given to whoever outfitted them with provisions and helped them sail back to their African homeland. Green suggested that if they got the trunks he would help them return to Africa.

Green's and Fordham's dreams of riches were interrupted by a brig of the U. S. Coast Guard, the *Washington*, which intercepted the rowboat as it made its way back to the schooner. The commander of the brig, Lieutenant Thomas Gedney, boarded the schooner and ordered, at gunpoint, all hands below the deck. Two Spaniards emerged from below. One was old, bearded, and sobbing. The other was a man in his mid-twenties. *Jose*, the younger man, spoke English and eagerly began to tell the tale of mutiny, blood, deceit, and desperation aboard the *Amistad*.

The schooner had left Havana on June 28, bound for Puerto

Principe, a Cuban coastal town. Aboard the *Amistad* were five whites, a mulatto cook, a black cabin boy, and fifty-three slaves. Jose had bought forty-nine adult male slaves at the Havana market. The older, bearded white, Pedro, had bought four child slaves, including three girls. On the fourth night at sea, the slaves managed to free themselves from their irons. In the ensuing struggle, the Africans killed the captain, Ramon Ferrer, and a mulatto cook. (According to the story later told by the Africans, the mulatto cook had told the slaves that they would be chopped to pieces and salted as meat for the Spaniards when the ship arrived at its destination.) Two crewman abandoned ship in the stern boat. Pedro and Jose were spared, apparently because their help was thought necessary in steering the ship to Africa. Pedro sailed toward Africa, but slowly and only during the day. At night, he reversed course and headed due west, hoping to landfall in the southern United States. After six weeks of zig-zagging at sea, the *Amistad* arrived in New York.

As Jose told his story, an athletic-looking black man, naked except for a gold necklace, suddenly appeared from below and leaped off the boat. The *Washington* gave chase, but the man was a strong swimmer, constantly diving as the ship neared. Tiring, the man took off his necklace, letting it--to the dismay of Gedney--fall to the bottom of the sea. Finally, crew members recaptured the black man, later known as *Cinque*, and put him into chains. The *Amistad* was towed to New London, Connecticut (USA). On arrival a trial ensued among the parties for, *inter alia*, the property rights of all the "things" aboard the ship, including cargo of wine, saddles, gold, and silk.

**You are the presiding judge in this case. Closely referring to relevant Roman Law principles, determine the property and family rights of Fordham & Green, Gedney, Pedro, Jose, and Cinque to the African slaves, gold, silk, saddles and wine.**

**[25 MARKS]**

## QUESTION 2

- a) History has judged Justinian, the Roman Emperor, as prescient. Critically assess this statement with regard to his contribution to the development of Roman Law. [15]
- b) Explain five (5) instances of ownership restrictions under Roman neighbor law. [10]
- [25 MARKS]

## QUESTION 3

- [a] Briefly discuss the relationship between possession and ownership in Roman Law. [6]
- [b] Explain "original" methods of acquisition of ownership and discuss three examples. [7]
- [c] Define *traditio* and explain the who bears the risk of loss or destruction on a sale of a *res*. [5]
- [d] Discuss guardianship and state the differences between a tutor and a curator. [7]

25 MARKS

## QUESTION 4

Identify and write a functional essay on two types of contracts under the Roman law of obligations.

25 MARKS

## QUESTION 5

- [a] Write an account of the position of a *de jure* and a *de facto* slave under the Roman law of persons. [15]

- [b] Contrast the work of the Glossators and Commentators. [5]  
[c] Define and explain a Partnership. [5]

**25 MARKS**