

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER
DECEMBER 2012

TITLE OF PAPER	:	LEGAL SYSTEMS AND METHODS
COURSE CODE	:	L101
TIME ALLOWED	:	THREE (3) HOURS

INSTRUCTIONS:

- i. ANSWER ANY FOUR (4) QUESTIONS.**
- ii. EACH QUESTION CARRIES A MARK OF TWENTY-FIVE (25).**
- iii. IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

YOU MUST NOT OPEN THIS PAPER UNTIL YOU ARE GRANTED PERMISSION TO DO SO BY THE EXAMINATION INVIGILATOR(S).

QUESTION 1:

(a) Discuss any FOUR reasons advanced as justification for the existence of rules in society. [8 Marks]

(b) Critically discuss the social contract theory of social organisation and relate the aspect of the theory that you deem relevant or applicable to the following extract of the American Declaration of Independence, 1776, as drafted by Thomas Jefferson:

WE hold these truths to be self-evident, that all men are created equal. That they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends it is the right of the people to alter or to abolish it, and to institute new government. [17 Marks]

[25 MARKS]

QUESTION 2:

(a) Compare and contrast public law and private law. [8 Marks]

(b) Give a brief explanation of a case brief. [2 Marks]

(c) State, without discussing or analysing, the factors that one has to take into consideration in the preparation of a case brief. [7 Marks]

(d) Comment on the statement that legal capacity is not the same as capacity to act in law. [8 Marks]

[25 MARKS]

QUESTION 3:

(a) What is meant by the problem of opacity posed by the language of statutes as these statutes are traditionally drafted? [5 Marks]

(b) State the word that you will, in the task of drafting a statute to avoid the problem of opacity, substitute for the following words:

(i) shall; (ii) furnish; (iii) save; (iv) therefor; (v) thereof; and (vi) herein. Give reasons why the new or substitute words are preferable to the replaced or substituted words. [12 Marks]

(c) Distinguish between primary sources of law and secondary sources of law and state why the distinction is important. [8 Marks]

[25 MARKS]

QUESTION 4:

(a) Briefly comment on any TWO of the following:

i. *Ratio decidendi* and *obiter dicta*; [8 Marks]

ii. The theory of maximal benefit and the theory of rights as general underpinnings of law; [8 Marks] and

iii. The role or functions of lawyers in society. [8 Marks]

(b) Discuss the choice of law problem in Swaziland's legal system. [9 Marks]

[25 MARKS]

QUESTION 5

In his book The Enforcement of Morals, 1959, Lord Patrick Devlin stated, *inter alia*:

Societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government... the suppression of vice is as much the law's business as the suppression of subversive activities.

Critically discuss this statement in the context of the Hart/Devlin debate on law and morality that followed the publication of the Wolfenden Committee Report in England in 1957.

[25 MARKS]

QUESTION 6:

(a) Define delegated legislation and discuss its requirements. [10 Marks]

(b) What is a presumption of statutory interpretation? [2 Marks]

(c) Critically discuss the extent of the application, in Swaziland, of the presumption that statutes are not meant to apply retrospectively. [13 Marks]

[25 MARKS]

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