

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2015

TITLE OF PAPER: LEGAL METHODS

COURSE CODE: LAW 101

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS: ANSWER QUESTION 1, (WHICH IS COMPULSORY), AND ANY
THREE (3) OTHER QUESTIONS OF YOUR CHOICE.

TOTAL NUMBER OF QUESTIONS TO BE ANSWERED ARE FOUR
(4)

DO NOT BE OPEN THE QUESTION PAPER UNTIL PERMISSION HAS BEEN GIVEN
BY THE CHIEF INVIGILATOR.

QUESTION ONE [COMPULSORY]

Considering the primary sources of law available in the Kingdom of Swaziland or, if you want, the 'existing law' of Swaziland, discuss what legal effect the 2005 Constitution generally has on the statute law, Roman-Dutch-Common Law, and, Swazi law and custom. The provisions (or sections), of the Constitution to bear in mind are: section 2 (1); section 252 (1), (2) and (3); and section 268 (1) and (2).

[25 marks]

QUESTION TWO

Legal systems are either codified or uncodified. Indicate the difference(s) between the two legal systems and, dealing with Swaziland, state whether she has a codified or an uncodified legal system.

[25 marks]

QUESTION THREE

Your high school friend is keen to know how Roman-Dutch Common Law is a source of law in Swaziland. In discussing how you would go about helping him better understand the development(s) that led to this situation, make reference to the relevant legal instrument(s) applicable.

[25 marks]

QUESTION FOUR

It is being assumed that you have read the celebrated English case of *Donoghue v Stevenson*, [1932] A.C. 562; [1932] All ER 1. It is also assumed that the facts of the case are well known and therefore not necessary to repeat. Discuss the genius of Lord Atkins in how he developed the common law principle on a product liability, by a manufacturer, to deal with the particular facts of the matter as it came before court for resolution. In the discussion you are to deal with his Scriptural/Biblical reference and then the legal principle he fashioned, drawing from the Scripture.

[25 marks]

QUESTION FIVE

Write short explanatory notes on the following:

- a) The repugnancy clause/doctrine; [5 marks]
- b) Primary source of law; [5 marks]
- c) *Lex Fundamentalis*; [5 marks]
- d) Common law/Anglo-American law/Anglo-Saxon law; [5 marks]
- e) Civil law/Continental law. [5 marks]

[Total marks:25]

QUESTION SIX

It is said that the legal system of Swaziland is a dual one. In truth, this is not a phenomenon unique to the country. It is to be found in most of post-colonial Africa. With reference to Swaziland (and mindful of the 2005 Constitution; the Court of Appeal Act No. 74 of 1954; the High Court Act, No. 20 of 1954; the Magistrate's Court Act, No. 66 of 1938; and, the Swazi Courts Act, No. 80 of 1950), discuss generally what a dual legal system means and make indication of the source(s) of law applicable, in respect thereto.

[25 marks]