

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

RE-SIT EXAMINATION PAPER, JULY 2016

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]

A statute, which is law made by the legislative body or the law-maker – Parliament – is a primary source of law in Swaziland. It presents in either a primary (also original) or secondary (also delegated or subsidiary) format.

As a source of law, what are its distinct advantages over other sources of law and what is the distinction between an original and delegated statute.

[25 marks]

QUESTION TWO

What are the differences between the common law and the continental law legal systems?

[25 marks]

QUESTION THREE

The decided case of *O'Callaghan NO v Clapham 1927 AD 310* illustrates the importance of sources of law in the resolution of a certain dispute that came before the court for decision. State what the facts in that case were and to what source the learned judges traced the action that the plaintiff had brought against the defendant.

[25 marks]

QUESTION FOUR

Discuss in detail how Swazi law and custom is recognized and enforced in the country in terms of the 2005 Constitution, or the Swazi Courts Act No. 80 of 1950, mindful of the sections or provisions that seek to restrict it.

[25 marks]

QUESTION FIVE

Write short explanatory notes on the following:

a) Judicial precedent;

[5 marks]

b) Secondary source of law;
marks]

[5

- c) Supremacy of the Constitution; [5
marks]
- d) *Ratio Decidendi*; and, [5
marks]
- e) *Obiter dicta/Obiter dictum*. [5
marks]

[Total marks: 25]

QUESTION SIX

Generally, we speak of our common law as being the Roman-Dutch law. Discuss whether you accept the correctness of the description 'Roman-Dutch law', or the purity thereof, given the background of its exportation to the Cape of Good Hope, the history of the English and its eventually getting to our shores.

[25 marks]