

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

TITLE OF PAPER: LEGAL SYSTEMS

COURSE CODE: LAW 102

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]

An elderly married couple, who have had a blissful time, desire that they should die together so that none of them would have to go through 'hardship' without the other. Their ripe age has had a knock-on-effect on their health. She nurses an arthritic back and he, arthritic knees. Because of that limiting condition, they don't get around the places they used to anymore. And those are not their only ailments. Life has never been the same: a cocktail of medication sees them by. As an escape route, to what they now regard as their agony, they enter into a mutual private pact to, in their words, "Put an end to it all". This involves that they will lock themselves inside their car with all windows closed. Carbon monoxide, from the emissions of their car, will be led inside the car via a pipe attached to the exhaust pipe/engine combustion emission pipe outside the car. As they sit cozily inside their car, with its engine running, they are stopped on their tracks by some curious police doing duty. Their plan is terminated.

Discuss what moral and legal issue/issues arise from this problem statement. In doing so, consider whether or not the police on duty should arrest them? If so, for what offence. State how the issues arising are to be legally resolved. In going about the interrogation of this problem, remember what the concerns of the law *stricto sensu* are, and what those of morality are.

[25 marks]

QUESTION TWO

Many professional bodies have a written code in terms of which their members should conduct themselves. This is the case with doctors, accountants, lawyers and teachers. The written codes for these various professional bodies are the ethical standards setting standards of behavior to be followed by the professional members.

Particularly related to the legal practitioners' profession, there is a law society. It governs those who are in the profession as well as those who desire to join the ranks of the profession.

Besides the academic requirement of a Bachelor of Laws (LL.B) degree, which is a necessary qualification for admission as an attorney, a person desirous of becoming an attorney must also be '*a fit and proper person*'.

The decided cases of Prince v President of the Law Society, Cape of Good Hope, and others 1998 8 BCLR 976 (C) and the Chikweche case (In re Chikweche 1995 (4) BCLR 533 (ZS)), have directly dealt with what is entailed in the inquiry of *a fit and proper person*. Those cases dealt with persons who subscribed to the religion of Rastafarianism. In the one case, Prince had vowed not to quit smoking marijuana. In the other, Chikweche locked his hair in dreadlocks. Their ways were challenged, by the law society, as disqualifying them from the category of persons *fit and proper* for admission as attorneys.

Discuss this ethical requirement and relate it to the potential clash between law and an individual's morals, religious views and the cultural values of the society in which he lives.

[25 marks]

QUESTION THREE

One-time president of the United States of America, Theodore Roosevelt once said: “No man is above the law and no man is below it: nor do we ask any man’s permission when we ask him to obey it.” In truth he was saying that which conventional wisdom should teaches us. But society is not always made up of ‘good students’ for conventional wisdom’s teachings.

Your high school colleague is having trouble with the traditional authorities of his home area. He has heard that the Constitution contains his rights and freedoms but cannot quite understand these. The authorities have told him that they are the law in his area. He interprets this to mean that they are above the law.

He has approached you and would wish to know whether the authorities are really the embodiment of the law or not. He also wishes to know if anyone, for that matter, can ever be above the law in Swaziland.

Discuss how you would go about giving advice to your friend.

[25 marks]

QUESTION FOUR

With your understanding of the classification or division of law, fully discuss the differences between a criminal action and a civil action, positioning them within either public law or private law categorisations.

[25 marks]

QUESTION FIVE

Adjective law falls either under private law or public law and substantive law also falls under private and public law.

a) What is adjective law?

[5 marks]

b) Give an adjective law example under both private and public law.

[5 marks]

c) What is substantive law?

[5 marks]

d) Give two substantive law examples under both private and public law.

[10 marks]

[Total: 25 marks]

QUESTION SIX

Law is regarded as a distinctive way of organizing society for the sake of rational human beings (and not the other way round). In other words, were human beings not there, surely there would have been no need for the law.

Discuss how this lifeless body we call law, is capable of ordering our lives in the society/societies we live.

[25 marks]

END OF QUESTION PAPER.