

UNIVERSITY OF SWAZILAND  
INSTITUTE OF DISTANCE EDUCATION  
DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, DECEMBER, 2016

TITLE OF PAPER : LEGAL SYSTEMS AND METHOD  
COURSE CODE : IDE – DL011  
TIME ALLOCATION : THREE (3) HOURS  
INSTRUCTION : **ANSWER QUESTION 1 AND THREE  
OTHER QUESTIONS**  
TOTAL MARKS : 100

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## QUESTION 1

In the state of Utopia two accused persons were convicted under the Fisheries Ordinance 30 of 1920 that they had fished unlawfully for crayfish. In addition to the sentence, the magistrate had ordered that the boat in which they had conducted the fishing operations must be forfeited to the state in terms of section 25 (b) of the Fisheries Ordinance 30 of 1920. This section stated that “the court may, at its discretion order the forfeiture of any nets or implements used in connection with the offence, and, in the case of a second or subsequent conviction, may order the forfeiture of any boats or gear so used.

The issue in this case was that the boat belonged to a third party who had not been a party to the fishing. The prosecutor had applied for the forfeiture of the boat and the accused argued that the section was never intended by the legislature to apply to punish individuals not otherwise involved in the illegal act.

With reference to case law, discuss the rule of interpretation or canon of construction of statutes which ought to be used by the court in determining the issue and what the decision should be.

[25 marks]

## QUESTION 2

- a) Delegated legislation refers to the rules and laws that are made by local governments and authorities that have been given special legislative powers by the parliament. These local governments and authorities in the exercise of their legislative powers have to ensure that the delegated legislation complies with certain requirements if it is to be valid.

With reference to the works of Hahlo & Kahn in their book *The South African Legal System* state these five (5) legal requirements. [15 marks]

- b) List the stages, according to the Parliament Standing Orders and Rules of the House of Parliament, that an ordinary bill in Swaziland will go through in order for it to be passed into a statute. [10 marks]

## QUESTION 3

- a) Legislation has certain disadvantages when it is compared to other dispute resolution methods. Discuss these disadvantages. [10 marks]
- b) List seven (7) examples of statutes. [10 marks]

- c) What is a non-legal source of law? [5 marks]

#### QUESTION 4

- a) The relevance of the ratio of one case may be affected by a number of factors. State two factors that may cause this. [5 marks]
- b) One method in which a court may avoid the doctrine of judicial precedent is a reliance on policy arguments. Discuss three of these arguments that can be used to avoid the doctrine of judicial precedent. [20 marks]

[TOTAL MARKS 25]

#### QUESTION 5

Citing relevant case law discuss the test for the validity of a local custom that has been laid by the courts.

[25 marks]

#### QUESTION 6

- a) What is a source of law? [5 marks]
- b) List the four (4) primary sources of law in Swaziland. [8 marks]
- c) List the three rules of statutory interpretation. [6 marks]
- d) What is meant by non-legal source of law? [3 marks]
- e) State two (2) remedies that a litigant has after judgment has been rendered if he is not satisfied with the judgment. [2 marks]
- f) When does a statute ordinarily cease to exist? [1 mark]

[TOTAL MARKS 25]