

UNIVERSITY OF SWAZILAND  
INSTITUTE OF DISTANCE EDUCATION  
DEPARTMENT OF LAW  
FINAL EXAMINATION PAPER, MAY, 2018

TITLE OF PAPER : LEGAL METHODS  
COURSE CODE : IDE – LAW 102 (LLB I & DIP LAW I)  
TIME ALLOCATION : THREE (3) HOURS  
INSTRUCTION : **ANSWER QUESTION 1 AND  
THREE OTHER QUESTIONS**  
TOTAL MARKS : 100

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN  
GRANTED BY THE INVIGILATOR

### QUESTION 1

Mafitsifitsi is a well-respected member of his community at Sihhoye area within the Lubombo region in Swaziland. He has as his best friend Mfanbovu who is also a very rich person. In fact, when Mafitsifitsi visits his friend's house he is always fascinated by the amount of wealth his friend has amassed over the years. On the 7<sup>th</sup> July, 2016, at 12 noon, Mafitsifitsi knocked on the front door of his friend's house for several minutes with no response. As he was about to leave in frustration, he slipped and fell on the front door step prying the door open. He entered the house into the kitchen. He took his friend's expensive gold grandfather's clock and a diamond Rolex watch that was lying in the kitchen table, which he planned to sell at an auction the next day.

Our common law defines the crime of House breaking as "the unlawful breaking and entering of premises with the intention to commit a crime." Thus the "elements" of the crime of house breaking are: a) Unlawfulness, b) breaking, c) entering, d) premises, e) intention.

Using the GIRAC method of legal analysis analyse the above legal problem.

[25 marks]

### QUESTION 2

- a) How did Swaziland, a former British colony, end up with a general law different from that of the colonial administrator? [10 marks]
- b) With reference to legal authority describe the Swazi legal system. [ 5 marks]
- c) List the primary sources of law in Swaziland. [5 marks]
- d) List five personal qualities that a lawyer must possess. [5 marks]

[TOTAL MARKS 25]

### QUESTION 3

- a) What is meant by *obiter dictum*? [5 marks]
- b) Mavuso was the owner of a motor vehicle. He parked the vehicle next to a shopping complex and went to do his shopping. When he came for his car it had disappeared. The police were informed and unsuccessful investigations conducted. Five months later, Mavuso is told by his cousin that a car that looks exactly like his lost car is being driven Simelane. Mavuso investigates this and finds it to be true. He then institutes action proceedings to recover the car from Simelane. In his plea Simelane says that he purchased the car from a South African man over two months ago. The Court is satisfied by Mavuso's evidence that he is indeed the rightful owner of the car. In his judgment, the learned judge, Matsebula J. (as he then was) says the following:

"I am satisfied on the evidence that Mavuso is the owner of the vehicle. How it came to be in Simelane's possession is not material for purposes of this action, for an owner can assert his right over his property anywhere and against any person whose possession it is. A thief takes no title to property, and he cannot give better title to a

third party who may be an innocent purchaser, such as Simelane in this case. The position would not be different if Simelane had found the car or if he had purchased it from a car dealer. Accordingly, I order that the car should be returned to Mavuso.

Stating your reasons identify the *ratio decidendi* as well as the *obiter dictum* of the above cited set of facts and extract of its judgment. [20 MARKS]

[TOTAL MARKS 25]

#### QUESTION 4

- a) Discuss how a judge can avoid the doctrine of judicial precedence in a case. [25 marks]

#### QUESTION 5

- a) Identify and list three categories of functions that lawyers perform. [3 marks]

- b) State what the principal functions of the following type of lawyers are:

- i) Conveyancer [3 mark]
- ii) Prosecutors [3 marks]
- iii) Notary – Public [3 marks]
- iv) Attorney General [3 mark]
- v) What are secondary sources of law? [5 marks]
- vi) State two (2) factors that may affect the relevance of a *ratio decidendi*. [ 5 marks]

[TOTAL MARKS 25]

#### QUESTION 6

- With reference to decided cases discuss how a custom becomes law. [25 marks]