

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2018

TITLE OF PAPER: LEGAL METHODS

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]

Nowhere is the unending conflict of laws between Roman-Dutch common law and Swazi law and custom, so obvious than in the areas of private law (particularly, family and succession laws).

Dwight Ngwenya, an up-and-coming civil engineer, has been married to his wife, Dianne, for the past ten (10) years. Their marriage was celebrated in terms of Swazi tradition and custom. A marriage certificate was duly issued by the Births, Marriage and Deaths Registry, to record the marriage.

The couple, in keeping with their new-found Christian faith, have decided they should re-marry in their church. For them, nothing would bring any joy than to now have their marriage 'blessed' by their pastor, and made more relevant to their faith.

Discuss the legal possibility, and legal implications, of their intended 're-marriage', or 'second' marriage, in terms of the obtaining legal system in Swaziland.

[25 marks]

QUESTION TWO

A combination of historical and legal factors led to the Roman-Dutch Law being the common law of Swaziland. Two legal instruments are relevant to this development. One of them was before independence (1968) and is appropriately referred to as the *Reception Statute*. The other, came after independence and is to be found in the 2005 Constitution.

Focusing particularly on the legal instruments in point, discuss what they inform us in their receiving the Roman-Dutch law and what conditions they (the legal instruments) set for the received Roman-Dutch law to be recognized and to apply, as a source of law in Swaziland.

[25 marks]

QUESTION THREE

A court's decision normally follows the structure illustrated in *Edelstein v Edelstein NO and Others 1952 (3) SA 1 (A)* decision, namely:

- statement of facts
- legal question or legal issue
- statement of applicable law or rules
- application of law to the facts
- conclusion (*ratio decidendi*).

Employing that structure, or the IRAC formulation, summarize, or brief, any one of the following cases: *Donoghue v Stevenson* [1932] AC 562 (HL) *Betty Motsa 1970-1976 SLR 200* (HC); *Wilkinson v Downtown* [1897] EWHC 1 (QB) or *Shaw v DPP* [1962] 2 All ER 446.

[25 marks]

QUESTION FOUR

Write short explanatory notes on the following:

- a) Law of general application. [5 marks]
- b) Legal capacity. [5 marks]
- c) Real right. [5 marks]
- d) Legal subject. [5 marks]
- e) Personal right. [5 marks]

[Total marks:25]

QUESTION FIVE

There are various actors/players/jurists that make up the legal profession.

Name any five of these. [5 marks]

Discuss, no less than four (4) of the qualities of character and personality required of the jurist.

[20 marks]

[Total marks: 25]

END OF QUESTION PAPER.