

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
SUPPLEMENTARY EXAMINATION PAPER, JULY, 2018

TITLE OF PAPER : LEGAL SYSTEMS AND METHOD
COURSE CODE : IDE – LAW102
TIME ALLOCATION : THREE (3) HOURS
INSTRUCTION : **ANSWER QUESTION 1 AND THREE
OTHER QUESTIONS**
TOTAL MARKS : 100

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GRANTED BY THE INVIGILATOR

QUESTION 1

The Zwane family from Malindza have a customary practice that they want to practice in the community that they live in. According to the Zwane family this custom has been practiced all over Swaziland and involves the smearing of a woman whom they intend to be a wife of a member of their family with red mud. There is protest and an outrage within the Malindza community concerning this alleged customary practice. This has necessitated the Zwane family to approach the High Court of Swaziland for redress as they urgently need to perform the alleged customary practice. The Zwane family has approached you for advice concerning how they can prove that this customary practice is indeed a custom that is valid in law. They have asked you to advise them on what factors they need to establish in court to prove that this customary practise is valid.

Using the relevant legal authorities advice the Zwane family. [25 marks]

QUESTION 2

Discuss the factors that may affect relevance of the *ratio* of one case.

[25 marks]

QUESTION 3

Discuss the reception of Roman Dutch law in Swaziland and its consequences.

[25 marks]

QUESTION 4

- a) What is the distinction between the doctrines of judicial precedent and *stare decisis*? [5 marks]
- b) Name the two Superior Courts in Swaziland. [2 marks]
- c) What is meant by *ratio decidendi*? [5 marks]
- d) List five personal qualities that a lawyer must possess. [5 marks]
- e) Discuss the various categories of functions of lawyers in society. [8 marks]

[TOTAL MARKS 25]

QUESTION 5

Critically discuss the choice of law problem that exists in Swaziland.

[25 marks]

QUESTION 6

a) List the five primary sources of law in Swaziland. [10 marks]

b) What is meant by the principle of *stare decisis*? [5 marks]

c) How do our courts avoid judicial precedence? [10 marks]

[TOTAL MARKS 25]