

UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
DEPARTMENT OF LAW  
SUPPLEMENTARY EXAMINATION PAPER, JULY 2019

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

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## 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 Eswatini. [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 by 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

Lawyers in society have certain functions. Discuss the various categories of functions lawyers perform in Society.

[TOTAL MARKS 25]

#### QUESTION 6

With reference to decided cases discuss how a custom becomes law.

[25 marks]