



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER
2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW 101

TITLE OF PAPER: LEGAL SYSTEM

TIME ALLOWED: 3 HOURS

Instructions:

1. This paper consists of Six (6) Questions.
2. Question One (1) is compulsory.
3. Answer any other Three (3) questions of your choice.

Special Requirements

None

Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

Question One

- a) Four students decide to take an illegal hunting expedition at Mlilwane Game Reserve at night. They intended to take only a night and return to campus before day break, so they did not carry much water or food supplies. Unfortunately, they all suddenly fall into a deep and undiscovered cave. No one knows where they are and they get trapped in the cave for over a week. Tired, hungry and weak they decide to cannibalize the weakest of them, a female. Two days after this gruesome act and meal, they are rescued by rangers and charged with murder. They argued the defence of necessity, stating that they had no choice and that it was necessary for them to kill and eat the girl in order to save their lives- the killing of the girl was necessary for their greater good.

As a judge in this case, and referring to any relevant case law authorities, how would you decide and distinguish whether the three surviving boys are guilty or not of murder?

15 Marks

- b) Bricks, a first year Law student of UNESWA, is the leading competitive swimmer at the university. He practices four days a week including Saturday afternoon. He is famous on campus for his well chiselled body and swimming techniques, and most students prefer him than the official coach for swimming lessons. Bricks is however not a certified lifesaver. One Saturday while swimming at the Emporium pool, he sees Cathy on the other end, a beginner, bobbing in and out of the water in distress. It appears as if she is in the process of drowning. Bricks sees this distress and decides to ignore her since after all a few days ago she had turned down his advances. But just as she is about to go under the water permanently, his conscience tugs at him and he shouts "Cathy, hang on, I am coming." Cathy hears and sees a frantic Bricks flapping towards her and begins kicking her legs in the hope of rescue, but this motion sends her further down and she drowns before Bricks gets to her. Later, an autopsy report reveals that Cathy would still be alive if only she hadn't started kicking her legs – this affected the natural buoy-effect of the water that would have propelled her upwards and she would have held onto the pool edge for support.

Would you find Bricks morally and/or legally responsible for the death of Cathy?

5 Marks

- c) King X has had enough of all the lawyers and law students of Law 101 in the country whom he accuses of disrupting his reign as monarch.

He actually agrees with the famous medieval English writer, William Shakespeare, who once remarked "lets kill all the lawyers!". In line with this sentiment, he issues a new law/decreed that authorizes the killing of all lawyers and laws students in country Y. His aim is to rid society of both law and the lawyers.

In your opinion, what do you find to be the paradox in this law by king X with regard to the nature of law.

5 Marks

Total 25 Marks

Question Two

Write short informative notes on the following (5 Marks each):

- a) 'pontification'
- b) *Judicis est jus dicere sed no facere*
- c) The Bill of Rights
- d) The difference in approach to the presumption of innocence under our jurisdiction and that of parts of India
- e) General Law and Administration Proclamation 4 of 1907

25 Marks

Question Three

Render a functional and critical account of the history and reception of Roman-Dutch common law in eSwatini.

25 Marks

Question Four

With the Preamble and the Bill of Rights of our Constitution as your fulcrum render a critical analysis of the case of *Attorney General v Aphone* (12/09) [2010] SZSC 32.

25 Marks

Question Five

Provide a functional discussion of the differences, overlapping, neutrality and conflict between law and morals.

25 Marks

Question Six

The Parliament of Eswatini has empowered the University of Eswatini to make laws and regulations for the administration of the school. One of

these regulations, Regulation 5.0, dealing with student conduct states, *inter alia*, that:

“All students entering the examination auditorium must not carry ‘pens, jackets and other things’ into the auditorium. During examination sitting, all female students are required to either have short or braided hair so as not to obstruct other learner’s frontal viewpoint of the ‘instructions board’ located at the front of the examination auditorium, as well as, so as not to obstruct the view of the Chief Invigilator at the front of the examination auditorium....Any violation of this regulation/law will lead to suspension or expulsion from the University of the learner and must **exclusively** be resolved within the University and not the courts of the country.”

Betty has decided to challenge the whole of Regulation 5.0 on the basis that it is rather deficient in law. She has approached you after learning that you are a first year law/journalism student who is well knowledgeable with the law on statutory interpretation.

Fully discuss the deficiencies of Regulation 5.0 with regard to the rules and aids of construction that you find relevant.

25 Marks