



UNIVERSITY OF ESWATINI

FIRST SEMESTER EXAMINATION PAPER, APRIL 2021

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 Five (5) Questions.
2. Answer Question One which is compulsory, and
3. Any three (3) questions of your choice.
4. All four questions may be attempted in any order.

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

Consider the following menacing moral dilemmas.

- a) In Country X, with the overwhelming growth of illegal drug-use and addiction across the country (and in pointless and little success in prosecution), the national government has permitted, *inter alia*, the establishment of clinics in certain locations where government nurses distribute clean and free needles to addicts. The reason for this was to attempt to cut crime and stop the spread of diseases.

However, the paradox in this governmental action is that if Country X's government is prepared to spend tax money so that "people can break the law in a safe way", then it should also be prepared to establish a designated "drunk-driving lane" on X's highways. Driving under the influence, and its associated hazards, is statistically a much bigger problem than illegal intravenous drug-use! The logic is the same with respect to both problems. **15 Marks**

- b) Sputnik, an expert swimmer, is sitting on a pool-side chair. He spots Sparks bobbing in and out of the water, obviously in distress. Sputnik is nonchalant and continues to recline sipping his lemonade while Sparks drowns. **10 Marks**

For each of these ((a) and (b)):

- i) Explain what the moral dilemma is.
- ii) Resolve it by advancing arguments related to the legal enforcement of morals.
- iii) How would you argue for *moral neutrality* concerning that dilemma?

Total 25 Marks

Question Two

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

- a) Difference between a crime and a delict
- b) *Judicis et jus dicere sed non facere*
- c) Hybrid legal system
- d) *S v Mankwanyane* 1995 (3) SA 391 (CC)
- e) The General Law and Administration Proclamation 4 of 1907

25 Marks

Question Three

The Eswatini legal system is built on the combined blood, sweat, tears and wisdom of more than 2 000 years of legal development. In significant ways, it dovetails with the story of a group of settlers seeking refreshment at a shore in what is now called the Western Province in South Africa. This coincidence, some have fiercely argued, robbed and deprived Eswatini of continuing within the trajectory of its own socio-legal orbit.

Do you agree?

Critically discuss the historical development of Roman-Dutch common law into present day 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

Adopting any relevant hypothetical, render a critical discussion of each of the five postulates of justice.

25 Marks