



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, APRIL 2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW105

TITLE OF PAPER: PRINCIPLES OF SWAZI LAW & CUSTOM (I)

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of Section (A) and (B).
2. Section A is compulsory.
3. Answer any three questions from Section B.

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.

SECTION (A)

Question 1 (this question is compulsory)

Considering the aspect of a marriage, under Swazi customary law, and the fact that there were assessors ('experts' of Swazi law and custom) sitting with the judge, what do you make out as the underlying difficulty, commonly associated with customary law, from the decided case of *R v Fakudze and Another*, 1970 – 1979, S.L.R. 422 (HC).

[25 marks]

SECTION (B)

Question 2

Swazi law and custom is an unwritten and non-codified source of law. A view is expressed that because of this, it is difficult to identify, as a source of law. That fact stands out as its shortcoming when it is compared with the other sources of law: the Roman-Dutch law and statute, for example. It is argued that codification would significantly enhance its status as a source of law.

- (a) What do you understand it to mean that Swazi law and custom is a non-codified source of law?

[5 marks]

- (b) What do you understand the process of codification to mean?

[5 marks]

- (c) Do you consider that the codification of Swazi law and custom would offer a solution out of this difficulty? Discuss.

[15 marks]

[Total marks: 25]

Question 3

Discuss the repugnancy clause in relation to customary law, locating it within the Constitution and the Swazi Court Act of 1951. In the discussion, indicate whether you consider it a good tool or not in how it relates with Swazi law and custom. Motivate your thoughts.

[25 marks]

Question 4

The Kingdom of Eswatini, like most post-colonial African countries, has a dual legal system, as well as a dual court system.

Discuss what it means that Eswatini has a dual legal system and a dual court system. In your discussion indicate how these respective systems operate.

[25 marks]

Question 5

Given the fact that a custom has a distinct disadvantage of having to be proved, before it can be applied, in the resolution of a dispute, account how a court should go about this exercise, as laid down in the case of *Van Breda v Jacobs* 1921 AD 330.

[25 marks]