



UNIVERSITY OF ESWATINI

FIRST SEMESTER RE-SIT EXAMINATION PAPER, MARCH 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)

The case of *Mokoena and 13 others v President, Swazi National Court, Nhlangano, and Director of Public Prosecutions*, 1982 – 1986 S.L.R. 116 (HC), illustrates how a directive, made over the radio, was elevated to a legal obligation, by the authorities, in terms of Swazi law and custom. Interestingly, this legal obligation did not find application to the non-white residents or nationals! What do you observe as strikingly interesting about the case, and do you consider it to have been compliant with the repugnancy clause?

[25 marks]

SECTION (B)

Question 2

The threshold question ‘what is customary law’, for scholars undertaking legal studies, is bound to receive some general agreement.

With reference to case law, discuss what courts customary law, also referred to as official law, means.

[25 marks]

Question 2

Given the legal scheme of things in the country, and with reference to provisions of the Constitution, discuss what impact the Constitution has on Swazi law and custom.

[25 marks]

Question 3

It has been observed that the reception of the Roman-Dutch common law, in eSwatini, was both a historical and legal affair.

Discuss this proposition, pointing to the history and legal side of it.

[25 marks]

Question 4

At the center of the case of *R v Betty Motsa* 1970 – 76 S.L.R. 200 (HC) was a belief in witchcraft. It is not a fallacy that this is a belief that widespread among many emaSwati. What is your considered view on how this case was decided? Discuss and motivate your view.

[25 marks]

Question 5

A civil rites marriage and a Swazi law and custom marriage, in Eswatini, are two forms of marriages that are legally recognized. When it comes to the legal consequences of the marriage of each type, a different picture emerges. In your view, given the imperatives of the Constitution, should this be so?

Discuss.

[25 marks]