

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION, MAY 2006**

**TITLE OF PAPER :**                    **LEGAL SYSTEM AND METHOD**

**COURSE CODE :**                    **DL 011**

**TIME ALLOWED :**                    **THREE (3) HOURS**

**INSTRUCTIONS :**

- 1.    ANSWER QUESTION ONE WHICH IS  
      COMPULSORY AND ANY OTHER  
      THREE QUESTIONS OF YOUR  
      CHOICE.**
- 2.    MARKS FOR QUESTIONS OR PARTS  
      OF A QUESTION ARE SHOWN IN  
      BRACKETS.**

**THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN  
GIVEN BY THE INVIGILATOR.**

### **QUESTION 1** (Compulsory)

“Just Rules of law in themselves are not enough to achieve justice. There must be a system of Procedure whereby they can be justifiably applied ...”.

- H.Potter, The Quest for Justice (1951).

- (a) Fully discuss the requirements for fair process as an aspect of justice. [15 marks]
  - (b) Explain the concepts of Formal Justice and Substantial Justice. [10 marks]
- [TOTAL MARKS = 25 MARKS]

### **QUESTION 2**

- (a) Briefly outline the process of the pleading stage in civil proceedings. (10 marks)
  - (b) State the differences between Civil and Criminal Trials. (10 marks)
  - (c) With the use of examples, briefly explain the concept of “Stare Decisis”. (5 marks)
- [25 MARKS]

### **QUESTION 3**

Write short notes on the following:

- (a) The Meaning of the phrase “Ratio Decidendi” (5 marks)
  - (b) Mediation on an Alternative Dispute Resolution Mechanism. (5 marks)
  - (c) The differences between an appeal and a review. (5 marks)
  - (d) The Hart-Derlin Debate on the legal enforcement of morals. (10 marks)
- [25 MARKS]

### **QUESTION 4**

- (a) With the use of case law, critically discuss the Literal Rule and the Golden Rule of Statutory Interpretation. (20 marks)
  - (b) Briefly highlight and explain the test or the validity of a local custom laid down in Van Breda & Others v Jacobs & Others 1921 AD 330. (5 marks)
- [25 MARKS]

**QUESTION 5**

- (a) Discuss the facts, the principle and the overall decision in the case of Shaw v DPP [1961] ALL ER 446. (15 marks)
- (b) Given the social and cultural context of Swaziland, can the principle in this case be positively applied in this country. (10 marks)
- [25 MARKS]