

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, DECEMBER 2009

TITLE OF PAPER	:	LEGAL SYSTEMS AND METHOD
COURSE CODE	:	IDE - DL011
TIME ALLOCATION	:	THREE (3) HOURS
INSTRUCTIONS	:	ANSWER ANY FOUR (4) QUESTIONS
TOTAL MARKS	:	100

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY
THE INVIGILATOR.

In the state of Utopia a group of members of Parliament met at a famous conference centre named Kai Kai Hotel. During discussions at the meeting it was resolved by some members that prostitution should be made legal. One member of Parliament, who was in support of this idea stated the reason for the decriminalization of prostitution was that the state of Utopia “ should move on with the times.” The member undertook to formally move a motion in the next Parliament sitting that prostitution should be made legal

You have been approached by a Member of Parliament who is of the view that prostitution is immoral and should remain a criminal offence. The member of Parliament has requested you to advise him, as his attorney, on whether or not prostitution as an immoral activity should continue to be a criminal offence in the state of Utopia.

Referring closely to the case of **Shaw v Director Of Public Prosecution [1961] 2 ALL E.R 446 (HL)**, illustrations as well as the differences between law and morals, advise the Honorable Member of Parliament. (25 marks)

Question 2

- (a) According to Professor Joseph Raz, in his book *The Authority Of law*, all legal systems necessarily perform, with varying degrees of effectiveness, certain social functions. The social functions of the law can be divided into primary and secondary functions.

What is meant by primary functions and secondary functions of the law? Demonstrate your understanding by giving **four (4)** examples of primary functions of the law and **two (2)** secondary functions of the law. (10 marks)

- (b) State and briefly discuss the four postulates of justice. (15 marks)

(Total marks=25)

Question 3

Page 3 of 4

Write short notes on the following:

- (a) Distinction between procedural and substantive law. (4 marks)
- (b) Distinction between a statute and "Bill for an Act." (5 marks)
- (c) Distinction between a plaintiff and an Applicant. (4 marks)
- (d) Onus of proof and standard of proof in civil proceeding. (4 marks)
- (e) The literal or plain meaning rule of statutory interpretation and its weaknesses. (8 marks)

(Total marks=25)

Question 4

- (a) Commencing with the highest court, outline the hierarchy of courts in Swaziland. (5 marks)
- (b) Name the four primary sources of the law that are recognized in Swaziland. (8 marks)
- (c) Ordinarily, when does a statute cease to operate? (2 marks)
- (d) Discuss judicial precedent as a source of law in Swaziland with reference to the following:
 - Why it is subordinate to legislation; (4 marks)
 - its definition; (1 mark)
 - its advantages; (3 marks)
 - its disadvantages. (2 marks)

(10 marks)

(Total marks=25)

Question 5

- (a) What is the distinction between ratio decidendi and obiter dicta? (5 marks)
- (b) Discuss two ways in which the doctrine of precedent may be avoided by lawyers and judges. (10 marks)
- (c) With reference to the tests for the validity of a local custom laid down in the case of **Van Breda & Others v Jacobs & Others 1921 AD 330** name the four things that must be proved to convince a court that a particular custom exists. (10 marks)

(Total marks=25)

Question 6

- (a) What are the disadvantages of using litigation as a means of resolving disputes? (10 marks)
- (b) Name and discuss three alternative dispute resolution methods to litigation. (15 marks)

(Total marks=25)