



Tutorial Letter 101/3/2018

Advanced indigenous law LCP4804

Semesters 1 and 2

Public, Constitutional and International law

IMPORTANT INFORMATION

This tutorial letter contains important information
about your module.

BARCODE



CONTENTS

	<i>Page</i>
1 INTRODUCTION	3
2 PURPOSE AND OUTCOMES	3
2.1 Purpose	3
2.2 Outcomes	4
3 LECTURER(S) AND CONTACT DETAILS.....	5
3.1 Lecturer(s)	5
3.2 Department.....	5
3.3 University	6
4 RESOURCES	6
4.1 Prescribed books	6
4.2 Recommended books	8
4.3 Electronic reserves (e-reserves)	9
4.4 Library services and resources information.....	9
5 STUDENT SUPPORT SERVICES.....	9
6 STUDY PLAN.....	10
7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING.....	10
8 ASSESSMENT	10
8.1 Assessment criteria.....	10
8.2 Assessment plan	11
8.3 General assignment numbers	11
8.3.1 Unique assignment numbers	12
8.3.2 Due dates for assignments	12
8.4 Submission of assignments	12
8.5 The assignments	13
8.6 Other assessment methods	14
8.7 The examination	14
9 FREQUENTLY ASKED QUESTIONS	15
10 SOURCES CONSULTED	15
11 CONCLUSION.....	15
12 ADDENDUM.....	15

1 INTRODUCTION

Dear Student

1.1 Tutorial matter

Some of this tutorial matter may not be available when you register. Tutorial matter that is not available when you register will be posted to you as soon as possible, but is also available on *myUnisa*.

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

You will receive a number of tutorial letters during the semester. A tutorial letter is our way of communicating with you about teaching, learning and assessment.

Tutorial Letter 101 contains important information about the scheme of work, resources and assignments for this module. We urge you to read it carefully and to keep it available when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

Please read Tutorial Letter 301 in combination with Tutorial Letter 101 as it gives you an idea of the general important information that you need when studying at a distance and within a particular college.

In Tutorial Letter 101, you will find the assignments and assessment criteria as well as instructions on the preparation and submission of the assignments. This tutorial letter also provides all the information you need about the prescribed study material and other resources and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must read all the tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

2 PURPOSE AND OUTCOMES

2.1 Purpose

The purpose of this module is for you to gain sufficient knowledge, skills, attitudes and competencies to analyse legal material (the Constitution, legislation, case law and academic opinion) directly pertaining to customary law (in particular, the law regulating family relationships and the institutional framework within which state power is exercised), to formulate legal

arguments and to apply your knowledge to practical problems that may arise. The purpose is to equip students with a sound understanding and knowledge of the norms and principles of indigenous law by building on the foundation laid in the second year module of IND 2601. Additionally, this module seeks to expose students to a critical evaluation and theoretical analysis of concepts through an advanced study of cases, statutes and textbooks on the transformation of indigenous law under the Bill of Rights.

Consequently, students who complete this module will be equipped with the knowledge, skills, attitudes and competencies to theorise, analyse and critically evaluate legal material; and to formulate relevant legal arguments on the application of indigenous law and its normative values in a constitutional democracy.

The module also gives insight to students, lecturers, legal practitioners, communities and judges on the harmonisation of the indigenous law as the warehouse of *ubuntu*, and the Western component of South African law by promoting the integration of the values of inclusiveness, group solidarity, compassion, respect, humanity and conformity with basic humanitarian norms to the South African legal system. This is because *ubuntu*'s usefulness has been demonstrated not only in its contribution in transformative constitutionalism (See *AZAPO and Others v President of the Republic of South Africa and Others* 1996 (8) BCLR 1015 (CC); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); but also in the transformation of the common law as well (See *S v Makwanyane* 1995 (6) BCLR 665, (death penalty); *Dikoko v Mokhatla* 2006 (6) SA 235 (CC) (defamation).

That is why you must take pride in studying African customary law which the courts increasingly appeal to through its *ubuntu* philosophy which serves as a tool for transforming society as a whole.

2.2 Outcomes

A range of tasks in study guides, tutorial letters, assignments and examinations will be used to show that you have achieved the outcomes.

Outcome 1:

Gain sufficient knowledge, skill, attitudes and competencies to analyse and critically evaluate legal material (the Constitution, legislation, case law and academic opinion) directly pertaining to customary law.

Assessment criteria:

- understanding of legal problems and issues relating to customary law are identified in real or simulated scenarios
- understanding of terms, rules, concepts, established principles and theories related to customary law

Outcome 2:

Formulate legal arguments and apply your knowledge to practical problems that may arise in customary law.

Assessment criteria:

resolution of well-defined, but familiar problems relating to customary law, using correct procedures and appropriate evidence

information presented and communicated reliably and coherently in professionally accepted formats, using basic information communication technology

legal texts used skilfully to substantiate arguments and support solutions for specific customary law issues

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

	Lecturer Building and office number E-mail Tel	Mrs N Dlamini-Ndwandwe Cas van Vuuren 7-98 dlaminf@unisa.ac.za (012) 429 8792
1.	Lecturer Building and office number E-mail Tel	Dr DD Ndimma Cas van Vuuren 7-98 ndimadd@unisa.ac.za (012) 429 8421

3.2 Department

All queries that are not of a purely administrative nature **but** are **about the content of this module** should be directed to us. Please have your study material with you when you contact us.

E-mail addresses and telephone numbers are included above but you might also want to write to us. Letters should be sent to

The Module Leader (LCP4804)
Department of Public, Constitutional, and International Law
PO Box 392
UNISA
0003

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.

3.3 University

COMMUNICATION WITH THE UNIVERSITY

If you need to contact the University about matters not related to the content of this module, please consult the publication *my Studies @ Unisa* which you received with your study material. This booklet contains information on how to contact the University (eg to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number available when you contact the University.

Enquiries will then be channelled to the respective departments.

4 RESOURCES

At the time of registration, you will receive an inventory letter containing information about your tutorial matter. Also see the booklet entitled *my Studies @ Unisa*, which you received with your study material. This booklet contains information on how to contact the University (eg to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Check the study material you received against the inventory letter. You should have received all the items specified in the inventory, unless there is a statement like “out of stock” or “not available”. If any item is missing, follow the instructions on the back of the inventory letter without delay.

PLEASE NOTE: Your lecturers cannot help you with missing study material. (Please see the booklet entitled *my Studies @ Unisa*.)

4.1 Prescribed books

Please consult the list of official booksellers and their addresses listed in *my Studies @ Unisa*. Your prescribed book for this module for this year is:

4.1.1 Himonga C and Nhlapo T (eds) (2014) *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives*. Cape Town: Oxford University Press.

This book discusses customary law as it is applied both in the courts and in contemporary social practice. Please make an effort to acquire this book and use it on all the areas where it can assist you in preparing for your assessments and examinations.

4.1.2 Prescribed reading Material

The module LCP4804 used to be a fourth year elective until 2017 and was chosen by those students who wanted to further their knowledge of the subject after passing the module IND2601. However, since 2018 LCP4804 is a compulsory module to all fourth year LLB

students. The prescribed and recommended books you have been referred to in sections 4.1 and 4.2 above comprise the minimum study material to be consulted when preparing for your assessments. This means that after studying the statutes or cases on which an assignment question is based, you must enrich your answer by consulting the following books in this order: **Himonga, C and Nhlapo T (2014) *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives***; and those who have access to **Himonga, C and MOORE, E (2015) *Reform of Customary Marriage, Divorce and Succession in South Africa and Introduction to legal pluralism in South Africa*** may consult it on any of the topics raised in your assignments. Check the table of contents of these books to find the chapter relevant to your question. Of particular importance for your assessment (assignments and examinations) are the following **prescribed statutes and cases**:

prescribed statutes

- **Constitution of the Republic of South Africa, 1996**
- **Recognition of Customary Marriages Act 120 of 1998 Traditional Leadership and Governance Framework Act 41 of 2003 as amended by Act 23 of 2009 The Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009**
- **Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000**

Please make sure that you get copies of these statutes. They are available from the South African Government website www.polity.org.za. We will make copies of them available as well in the *myUnisa* resource which is referred to below.

Very important in answering your assignments and examinations are the following prescribed cases:

Meaning of customary law under the 1996 Constitution

Pilane and Another v Pilane and Others 2013 (4) BCLR 431 (CC)

Alexkor Ltd and Another v Richtersveld Community and Others 2003 (12) BCLR 1301 (CC)

Bangindawo v Head of Nyanda Regional Authority; Hlantlalala v Head of Western Tembuland Regional Authority 1998 (3) SA 262 (Tk)

Mhlekwana and Feni v Head Western Tembuland Regional Authority and Another 2001 (1) SA 574 (Tk)

The use of statutory interpretation as a tool for racial discrimination

Daniels v Campbell and Others 2004 (7) BCLR 735 (CC)

Moseneke and Others v The Master of the High Court 2001 (2) SA 19 (CC)

Judicial ascertainment of customary law in the democratic dispensation

Bhe v Magistrate Khayelisha and Others 2005 (1) BCLR (1) (CC)

Ngwenyama v Mayelane 2012(10) BCLR 1071 (SCA)

Mayelane v Ngwenyama and Another 2013 (8) BCLR 918 (CC)

Fanti v Boto and Others 2008 (5) SA 405 (C)

Mabuza v Mbatha 2003 (7) BCLR 43 (C)

Mabena v Letsoalo 1998 (2) SA 1068 (T)

Shilubana v Nwamitwa 2008 (9) BCLR 914 (CC)

Living law as the law used in social practice

Certification...

Bhe v Magistrate Khayelisha and Others 2005 (1) BCLR (1) (CC)

Shilubana v Nwamitwa 2008 (9) BCLR 914 (CC)

Judicial ascertainment of customary law before the advent of the Constitution

Ex parte: Minister of Native Affairs – In re Yako v Beyi 1948 (1) 388 (A)

Sigcau v Sigcau 1941 CPD 334

Sigcau v Sigcau 1944 AD 67

Mthembu v Letsela and Another 1997 (2) SA 936 (T)

Mthembu v Letsela and Another 1998 (2) SA 675 (T)

Mthembu v Letsela and Another 2000 (3) SA 867 (SCA)

Nwamitwa v Philia and Others 2005 (3) SA 536 (T)

Shilubana and Others v Nwamitwa 2007 (2) SA 432 (SCA)

Shilubana v Nwamitwa 2008 (9) BCLR 914 (CC)

The resolution of traditional leadership disputes

Shilubana v Nwamitwa 2008 (9) BCLR 914 (CC)

Nwamitwa v Philia and Others 2005 (3) SA 536 (T)

Shilubana and Others v Nwamitwa 2007 (2) SA 432 (SCA)

Pilane and Another v Pilane and Others 2013 (4) BCLR 431 (CC)

Statutory reforms of customary family law under the 1996 Constitution

Maluleke v Minister of Home Affairs Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported)

Gumede v President of the Republic of South Africa 2009 (3) BCLR 243 (CC)

Motsoatsoa v Roro All SA 324 (GSJ)

On ukufakwa

Nobumba v Mfecane 2 NAC (1911) 104

4.2 Recommended books

(Good books to enhance your knowledge but not necessary for purposes of assessment)

4.2.1 **Himonga, C and MOORE, E (2015) Reform of Customary Marriage, Divorce and Succession in South Africa: Juta & Co Claremont.** This book contains research done on people involved in the problems you are studying in actual social practice.

4.2.2 **Bekker, JC, Rautenbach, C & Goolam, NMI. (2014) Introduction to legal pluralism in South Africa.** 4th edition Durban: Lexis Nexis. You will find essays discussing the topics you are studying which may add value to your answers.

Of particular importance are the cases and other materials that appear in **Assignments 1, 2 and 3** all of which are prescribed and must be studied as such for assignments and examination purposes. All study materials appearing in these three assignments is important for examination purposes.

In researching any question raised in the assignments it is useful to check the prescribed and recommended material, which includes books, cases, legislation and journal articles, before proceeding to look for additional reading material. This material is prescribed and/or recommended by us as useful for your understanding of the course.

This is in addition to all the prescribed cases and legislation. You will notice from the assignment questions that extracts have been taken from these prescribed materials and should be recognised and identified as such.

4.3 Electronic reserves (e-reserves)

There are limited electronic reserves which are in the process of being developed.

4.4 Library services and resources information

For brief information, go to www.unisa.ac.za/brochures/studies

For detailed information, go to the Unisa website at <http://www.unisa.ac.za/> and click on **Library**.

For research support and services of personal librarians, go to <http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=7102>.

The Library has compiled numerous library guides:

- finding recommended reading in the print collection and e-reserves – <http://libguides.unisa.ac.za/request/undergrad>
- requesting material – <http://libguides.unisa.ac.za/request/request>
- postgraduate information services – <http://libguides.unisa.ac.za/request/postgrad>
- finding , obtaining and using library resources and tools to assist in doing research – http://libguides.unisa.ac.za/Research_Skills
- how to contact the library/finding us on social media/frequently asked questions – <http://libguides.unisa.ac.za/ask>
-

5 STUDENT SUPPORT SERVICES

Important information appears in your *my Studies @ Unisa* brochure.

For information on the various student support systems and services available at Unisa (eg student counselling, tutorial classes, language support), please consult the publication *my Studies @ Unisa* which you received with your study material.

5.1 Contact with fellow students

It is advisable to form study groups and to have contact with fellow students. The addresses of students in your area may be obtained from the following department:

Directorate: Student Administration and Registration
PO Box 392
UNISA
0003

5.1.1 MyUnisa

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The **myUnisa** learner management system is Unisa's new virtual campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through the computer and the internet.

To go to the *myUnisa* website, start at the main Unisa website, <http://www.unisa.ac.za>, and then click on the orange **myUnisa** button on the right-hand side of the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication *my Studies @ Unisa* which you received with your study material for more information on *myUnisa*.

5.1.2 Discussion classes

There is no group discussion for this module.

5.1.3 Tutorials

There are no tutorials in this module.

6 STUDY PLAN

Use your *my Studies @ Unisa* brochure for general time management and planning skills.

6.1 Assignments and learning

Assignments are seen as part of the most important learning material for this module. As you do the assignment, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning. You must use the assignments for both semesters as practice for the examination.

6.2 Exams and learning

We would like to make a few general suggestions on how to approach the examination in this module. Firstly, you should carefully examine the prescribed materials, particularly those appearing in Assignments 1, 2 and 3 as preparation for examinations. Plus you must practise answering previous examination papers to get an idea of our general approach to setting examination questions. More recent examination papers are more important for this purpose as they are indicative of our current approach to student assessment. Also very important are the assignment questions in previous semesters. In doing so you must bear in mind that the questions may differ from semester to semester and that the format of the paper, and the way in which the questions are formulated, may well vary, since our aim in the assignments and the examination is to test various skills.

It is always a good idea first to read through the paper carefully in order to note the marks allocated to each question, and then to decide on the time that you should spend on each question. As a general guideline, you should allow six minutes to answer for five marks. Start practicing now to see how much you can write in six minutes.

7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

There are no practicals for this module

8 ASSESSMENT

8.1 Assessment criteria

Outcome 1:

Gain sufficient knowledge, skill, attitudes and competencies to analyse and critically evaluate legal material (the Constitution, legislation, case law and academic opinion) directly pertaining to customary law.

Assessment criteria:

- understanding of legal problems and issues relating to customary law are identified in real or simulated scenarios
- understanding of terms, rules, concepts, established principles and theories related to customary law

Outcome 2:

Formulate legal arguments and apply your knowledge to practical problems that may arise in customary law.

Assessment criteria:

resolution of well-defined, but familiar problems relating to customary law, using correct procedures and appropriate evidence

information presented and communicated reliably and coherently in professionally accepted formats, using basic information communication technology

legal texts used skilfully to substantiate arguments and support solutions for specific customary law issues

8.2 Assessment plan

Information about the chosen assessment method and mode is clearly communicated to you in Tutorial Letter 101.

We explain the following to you:

- how admission to the examination works for the specific module
- how the assessment system works: what is compulsory, what is optional, due dates, how you will receive feedback and the assessment criteria
- how the year mark will be calculated (in line with the University's Assessment Policy)
- the division between the year mark and the examination mark (in line with the University's Assessment Policy)

8.3 General assignment numbers

Assignments are numbered consecutively per module, starting from 01

There are three assignments for this module:

- Assignment 01 is a multiple-choice assignment which consists of 10 questions for a total of 20 marks.
- Assignment 02 is a written assignment which is out of 20 marks.
- Assignment 03 - Section A consists of some activities and feedback. Section B consists of self-evaluation questions which you must answer as part of your practice for the examination and should **not submitted**.

In some cases, additional assessment might be available on the *myUnisa* site for your module.

8.3.1 Unique assignment numbers

In addition to the general assignment number (e.g. 05), assignments to be completed as written assignments **or** by means of mark-reading sheets (multiple-choice questions) **or** the work-integrated learning forms (if special routing requirements apply) will have their **own unique assignment number** (e.g. 102717).

Assignments are seen as part of the learning material for this module. As you do the assignment, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning. Looking at the assessment criteria given for each assignment will help you to understand what is required of you more clearly.

8.3.2 Due dates for assignments

The closing dates for the submission of the assignments are as follows:

For the first semester:

- 16 March 2018 718021 Assignment 01 (**compulsory [multiple choice]**)
- 16 March 2018 733209 Assignment 02 (**compulsory [written]**)

For the second semester:

- 17 August 2018 841822 Assignment 01 (**compulsory [multiple-choice]**)
- **17 August 2018** 871822 Assignment 02 (**compulsory [written]**)

8.4 Submission of assignments

You may submit your written assignments by post **or** electronically via *myUnisa*. Assignments completed on mark-reading sheets (Multiple Choice Question) may be submitted by post. Assignments may not be submitted by fax or e-mail.

For detailed information on assignments, please refer to the ***Studies @ Unisa*** brochure, which you received with your study package.

To submit an assignment via *myUnisa*:

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the menu on the left-hand side of the screen.
- Click on the assignment number you wish to submit.
- Follow the instructions.

PLEASE NOTE: Enquiries about assignments (eg whether or not the University has received your assignment or the date on which an assignment was returned to you), Please consult the publication ***my Studies @ Unisa*** which you received with your study material for more information, on how to contact the University (eg to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

You might also find information on myUnisa.

Assignments should be addressed to
The Registrar
PO Box 392
UNISA
0003

8.5 The assignments

You will receive the correct answers automatically for multiple-choice questions. For written assignments, markers will comment constructively on your work. However, commentaries on compulsory assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments. The tutorial letters will be numbered 201, 202 etc.

As soon as you receive the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination.

PLEASE NOTE: Although you may work together with other students when preparing assignments, you must write and submit your own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. That will amount to plagiarism and none of these assignments will be marked. Furthermore, these students may be penalised or subjected to disciplinary proceedings of the University.

The compulsory assignments and the year mark

LCP4804 is a semester module and you have to submit **two** compulsory assignments for this module:

1. a multiple-choice assignment
2. a written assignment

Both assignments count towards your final mark and must be submitted for evaluation. The two compulsory assignments will count 20% towards a student's final mark for the module, 10% for the first assignment and 10% for the second assignment. However you must obtain a subminimum of 40% in the examination, before the year mark is included in your examination mark.

The compulsory assignments and admission to the examination

If you submit the compulsory assignments in time (before or on the date of submission) you will be admitted to the examination, regardless of the marks you obtain for the assignments. In other words, if you submitted the compulsory assignments but obtained 0% you will still be allowed to sit for the examination. You will, however, not have a year mark. If you do not submit the compulsory assignments before or on the due date **you will not receive admission to write the examination.**

8.6 Other assessment methods

Deserving students may be given oral examinations by presenting particular topics to a panel of examiners. Where a student is left with one or so modules before obtaining their qualification they may be allowed to complete a portfolio given topic to complete and submit for examination purposes.

8.7 The examination

Use your **my Studies @ Unisa** brochure for general examination guidelines and examination preparation guidelines. The Study Guide for this module is a bit outdated. Consequently, it is due for review. It is still valuable to lay foundations for your understanding of the module as whole. When studying the Study Guide care should be taken as some of the values of the Constitution were not incorporated.

This is a semester module, which means that if you are registered for the first semester you will write the examination in May/June 2018 and the supplementary examination will be written in October/November 2018. If you are registered for the second semester you will write the examination in October/November 2018 and the supplementary examination will be written in May/June 2019.

During the course of the semester, the Examination Section will provide you with information about the examination in general, examination venues, examination dates and examination times.

You will write **one two-hour paper**. The paper counts **100 marks**. Your examination mark out of 100 will be adapted to a mark out of 80%. Your year mark out of 20% (ie your assignment marks) will be added to your examination mark out of 80% to get to your final mark for this module. Remember, you have to obtain a subminimum of 40% in the examination before your year mark out of 20% (your assignment marks) will be taken into account.

Previous examination papers are now available to students on **myUnisa**. You may, however, accept that examination questions may or may not be similar to the questions asked in the activities in your study guide and in the assignments. **Those who work through these assignments and activities will benefit tremendously in the examination**

From your assignments you will have noticed that your study guide did not play a major role in your questions and answers. The reason is that it is under review. It was compiled long before most of your prescribed cases and statutes were issued. A lot has changed since then. Its importance has therefore waned over time. It is still a good guide to show you how to understand the module in general, and study unit 2, (marriage), study unit 3, particularly contracts where (*ukufakwa*) and lastly study unit 5 for the troubled primogeniture principle are quite helpful. Indeed this study guide is the starting point after going through this tutorial letter (Tutorial 101).

Hence the work around the assignments and comments thereon is very important. The work that you do on Assignments 01, 02 and 03 is very very important for examination purposes, plus the work for last/next semester. In the case of decided cases which are always important in all law modules, the **names of the parties**; the **legal question to be answered by the court**, the **reasons for judgment** (*ratio decidendi*), **decision of the court** and **your own comment** on the judgment must be clearly stated in the written **assignments** and **examinations**. Without this information your application of any judgment will be baseless.

9 FREQUENTLY ASKED QUESTIONS

The *my Studies @ Unisa* brochure contains an A-Z guide of the most relevant study information.

How do you plan your studies?

Do you understand how much time studying at UNISA can take up? You have many responsibilities if you want to be a successful student. Although the University provides a number of support services (e.g. academic skills development, counseling, student wellness), you have a responsibility to plan your studies and conscientiously work through your study material in a constructive way if you want to be a successful student. There are no guarantees in life, but your chances of success at UNISA are far greater if you plan your studies, are committed to working through your study material and if you interact with the University whenever you need support.

10 SOURCES CONSULTED

Students must consult the study materials listed under prescribed sources.

11 CONCLUSION

The prescribed and recommended materials are sufficient for the successful completion of this module.

12 ADDENDUM

APPENDIX A: FIRST SEMESTER COMPULSORY ASSIGNMENTS

(A) ASSIGNMENT 01

ASSIGNMENT 01: MULTIPLE-CHOICE QUESTION ASSIGNMENT

CLOSING DATE: 16 March 2018

UNIQUE NUMBER FOR LCP4804 STUDENTS: 718021

PLEASE NOTE!!! PLEASE NOTE!!!

Instructions:

1. Your answer must be completed on a Unisa mark-reading sheet.
2. The assignment consists of 10 sets of **cases, statutes or other source material**
3. You must select the one **case, statute or other source** which is accurate from each set.

Marking of the assignment:

1. Each answer carries one mark.
2. No mark will be awarded for an incorrect answer.
3. No mark will be awarded for an unanswered question.
4. The assignment is not marked negatively: that is, marks will not be deducted for incorrect answers

Assessment of the assignment:

The assignment will count 10% towards your year mark. If you do not submit the first assignment, you will **not** be admitted to the examination.

The information that follows is extremely important. It deals with the instructions on how to complete and submit the assignment. **Please read this information very carefully before you start with the assignment.**

1. Please **consult** the brochure *my Studies @ Unisa* for instructions on how to use and complete a mark-reading sheet, as well as an example of an orange mark-reading sheet used for assignment purposes. **Follow the instructions very carefully.** Please ensure that your name, address, student number, unique number, module code and assignment number appear on the mark-reading sheet, and that this information is correct.
2. **Please use an HB pencil when you fill in the mark-reading sheet. Please do not use a pen when you complete the mark-reading sheet.** Please mark the number of the statement that you choose next to the number of the relevant question.
3. Each year a number of students submit faulty mark-reading sheets that cannot be processed by the computer. Sheets that are rejected by the computer will be returned to students without being marked.
4. You may also submit the assignment via *myUnisa*. **Do not fax the assignment to the University. Also, do not fax or e-mail the assignment to the lecturers.**
5. Do not submit the assignment a second time. The computer will simply reject this assignment as a duplicate assignment.
6. **Make sure that you submit the mark-reading sheet in time for the University to receive it by the closing date. No extension will be granted for the submission of the assignment, since the assignment is marked by the computer.**
7. Students who submit the assignment long before the closing date will have to wait for their results until the assignment is marked by the computer. **No results will be available before the closing date of the assignment.**
8. Soon after the closing date of the assignment you will receive a computer printout giving your answers, the correct answers to the questions (ie the lecturer's answers) and your mark for the assignment.
9. The Assignment 01 (multiple-choice question assignment) consists of **10** questions. Make sure that you answer all the questions on the same mark-reading sheet! These questions cover the entire LCP4804 study material and the compulsory readings in your prescribed book. Each question counts one mark.
10. This assignment counts for **20** marks. The mark that you obtain for this assignment will form part of your year mark and may count towards your final mark, if you obtain a subminimum of 40% in the final examination.
11. The detailed commentary on Assignment 01 (multiple-choice question assignment) will be sent to you in another tutorial letter together with the commentary on Assignment 02 (written assignment) so that you can check your answers by using the commentaries.

Please Note. Remember, the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

ASSIGNMENT 01: MULTIPLE-CHOICE QUESTION ASSIGNMENT

CLOSING DATE: 16 March 2018

UNIQUE NUMBER FOR LCP4804 STUDENTS: 718021

Answer **all** the questions with an HB pencil on the mark-reading sheet provided. **Please use an HB pencil when you fill in the mark-reading sheet. Please do not use a pen when you complete the mark-reading sheet.** The question consists of a set of **cases, statutes or other source materials. The answer is associated with one of them.** Please study those **cases or statutes until you find the one associated with the answer.** You must make your mark next to the number of the **case, statute or other source material associated with the answer. You may not choose more than one answer. In any event there is only one correct answer. On this basis you must answer the following questions:**

Question 1

1. *Pilane and Another v Pilane and Others* 2013 (4) BCLR 431 (CC)
2. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)
3. *Maluleke v Minister of Home Affairs* Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported),

Answer 1 (match the following answer with the corresponding statement above)

The warning that the pillars of state must respect African customary law, and its traditions and institutions and avoid treating it as an inconvenience to be tolerated but to treat it as a heritage to be nurtured and preserved for posterity.

Question 2

1. The primary purpose of the rule is to preserve the family unit and ensure that upon the death of the family head, someone takes over the responsibilities of the family head.
2. To say that [African law must not be opposed to the principles of public policy and natural justice] is fundamentally flawed as it reduces African Law which is practised by the vast majority in this country) to foreign law – in Africa.
3. It is common cause that no customary union existed between the appellant and the deceased ...was born. It is also common cause that no customary union was entered into subsequent to her birth.

Answer 2 (match the following answer with the corresponding statement above)

Bhe v Magistrate Khayelisha and Others 2005 (1) BCLR (1) (CC)

Question 3

1. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
2. *Maluleke v Minister of Home Affairs* Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported),
3. *Shilubana and Others v Nwamitwa* 2008 (9) BCLR 914 (CC).

Answer 3 (match the following answer with the corresponding statement above)

The negotiation is the crucial part in the determination of the validity of the customary marriage.

Question 4

1. *Mayelane v Ngwenyama and Another* 2013 (8) BCLR 918 (CC)
2. *Daniels v Campbell and Others* 2004 (7) BCLR 735 (CC)
3. *Nwamitwa v Philia and Others* 2005 (3) SA 536 (T)

Answer 4 (match the following answer with the corresponding statement above)

The statutes (Maintenance of Surviving Spouses Act and Intestate Succession Act) never excluded spouses from other cultures from recognition as such, but the interpretation placed on them under apartheid did.

Question 5

1. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
2. *Fanti v Boto and Others* 2008 (5) SA 405 (C)
3. *Mabuza v Mbatha* 2003 (7) BCLR 43 (C)

Answer 5 (match the following answer with the corresponding statement above)

The ritual that was used in the past to mark the validity of a customary marriage cannot be held as the requirement in the present urbanised conditions of the people.

Question 6

1. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)
2. *Shilubana v Nwamitwa* 2008 (9) BCLR 914 (CC)
3. *Maluleke v Minister of Home Affairs* Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported)

Answer 6 (match the following answer with the corresponding statement above)

A contemporary tradition takes over as the living law of the people once their past practice ceases to apply

Question 7

1. *Maluleke v Minister of Home Affairs* Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported)
2. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
3. *Shilubana and Others v Nwamitwa* 2008 (9) BCLR 914 (CC).

Answer 7 (match the following answer with the corresponding statement above)

Mynhardt J was accordingly correct in holding that Tembi is illegitimate.

Question 8

1. Section 211(3) of the 1996 Constitution,
2. Traditional Leadership and Governance Framework Act 41 of 2003
3. Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

Answer 8 (match the following answer with the corresponding statement above)

The royal family must, within a reasonable time after the need arises for the position of a king or a queen to be filled, and with regard to the applicable customary law...

Question 9

1. *Mthembu v Letsela and Another* 1997 (2) SA 936 (T).
2. *Shilubana and Others v Nwamitwa* 2007 (2) SA 432 (SCA)
3. *Mthembu v Letsela and Another* 1998 (2) SA 675 (T)

Answer 9 (match the following answer with the corresponding statement above)

The devolution of the deceased's property onto the male heir involves a concomitant duty of support...

Question 10

1. The devolution of the deceased's property onto the male heir involves a concomitant duty of support...
2. Other aspects of the customs and traditions governing chieftainship are not necessarily affected...
3. These responsibilities include looking after the dependants of the deceased and administering the family property on behalf of and for the benefit of the entire family.

Answer 10 (match the following answer with the corresponding statement above)

Bhe v Magistrate Khayelisha and Others 2005 (1) BCLR (1) (CC)

TOTAL=10X2 [20]

(B) ASSIGNMENT 02: WRITTEN ASSIGNMENT**COMPULSORY ASSIGNMENT**

UNIQUE NUMBER: 733209

CLOSING DATE: 16 March 2018

PLEASE NOTE!!! PLEASE NOTE!!!

Purpose of the assignment:

We assume that you have worked through all the prescribed material and are now ready to answer some questions which may be similar to examination questions. In this assignment we want you to show that you now have a deeper understanding of most of the principles, legal issues and problems relating to customary law.

The information that follows is extremely important. It deals with the instructions on how to complete and submit the assignment. **Please read this information very carefully before you start completing the assignment.**

1. **Remember:** Please number your Assignment 02 on the assignment cover before submitting it.
2. After you have filled in all the required information on the assignment cover **correctly**, put your assignment in one of the brown envelopes that you received with your study package. Then send your assignment to **Assignments**. You may also submit the assignment via *myUnisa*. **Do not fax or e-mail the assignment to the University. Also, do not fax or e-mail your assignment to the lecturers.**

3. Please **consult** the brochure *my Studies @ Unisa for instructions* on how to complete assignment covers and submit written assignments.
4. **Make sure that you submit your written assignment in time for the University to receive it by the closing date. No extensions will be granted for the submission of late assignments.**
5. **This assignment counts 20 marks.** The mark that you obtain for this assignment will form part of your year mark and may count towards your final mark if you obtain a subminimum of 40% in the examination.
6. When you answer the questions of this assignment, you must **plan your answers in advance**. Concentrate on the following when you answer your questions: **neatness, presentation of your answers in a logical manner** and the use of **good language** (ie correct formulation of sentences and correct spelling). **Students who ignore this instruction will be penalised.**
7. Your answers should, therefore, be concise and logical. This will also teach you to give similar answers in the examination.
8. **The detailed commentary on Assignment 02** (written assignment) will be sent to you in another tutorial letter together with the commentary on Assignment 01 (multiple-choice question assignment) so that you can check your answers by using the commentaries. **Remember**, the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

ASSIGNMENT 02: WRITTEN ASSIGNMENT

UNIQUE NUMBER: 733209

CLOSING DATE: 16 March 2018

Question 1

Study *ukufakwa* under the law of contract of your Study Guide and Chapter 10 of your prescribed textbook and answer the following question:

Examine the *ukufakwa* institution of customary law and work out how adherence to **each** of the attributes of *ubuntu* contained therein such as communal living, group solidarity, responsibility, accountability, generosity, shared belonging, the ethos of co-operation and the ethic of reciprocity can promote today's quality of life in your country. (4 marks)

Question 2

Answer the following questions: Each question comprises a set of cases arising from the same set of facts. Analyse each set of cases indicating the names of the parties; the legal question to be answered by the court, the reasons for judgment (*ratio decidendi*) given by each court and the decision of each the court must be clearly stated in the written assignments and examinations. Without this information your comment on or criticism of any judgment will be baseless.

In your analysis of each of the following sets of cases please pay attention to the following two points:

1. **Give the names of the parties; the legal question that was answered by the court, the reasons for judgment (*ratio decidendi*) given by EACH court and the decision of EACH court.**
2. **Give your comment on whether the court applied customary law as a fully recognised and independent component of the South African legal system with its own norms and values:**
 - **Taking into account section 211(3) of the Constitution, on the one hand**

- and the extent to which the court applied its mind to the requirements of the Bill of Rights in the appointment of traditional leaders.

The Shilubana set of cases.

Not more than two typed pages or three hand written pages.

- | | | |
|----|--|------------------|
| 1. | <i>Nwamitwa v Philia and Others</i> 2005 (3) SA 536 (T) | (3 marks) |
| 2. | <i>Shilubana and Others v Nwamitwa</i> 2007 (2) SA 432 (SCA) | (3 marks) |
| 3. | <i>Shilubana v Nwamitwa</i> 2008 (9) BCLR 914 (CC) | (3 marks) |

Not more than two typed pages/ three hand written pages..... [9]

Question 3

Evaluate the transformative role of the following post-apartheid statutes in the development of customary law. To illustrate the level of development that was achieved you must briefly discuss the position before and after the reforms were effected:

- | | | |
|-----|---|--------|
| (a) | Recognition of Customary Marriages Act 120 of 1998..... | (2) |
| (b) | Traditional Leadership and Governance Framework Act 41 of 2003 as amended by Act 23 of 2009 | .(2) |
| (c) | The Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 | ...(3) |

TOTAL = [20]

Not more than two typed pages/ three hand written pages

APPENDIX B: SECOND SEMESTER COMPULSORY ASSIGNMENTS

(A) ASSIGNMENT 01

ASSIGNMENT 01: MULTIPLE-CHOICE QUESTION ASSIGNMENT

CLOSING DATE: 17 August 2018

UNIQUE NUMBER FOR LCP4804 STUDENTS: 841822

PLEASE NOTE!!! PLEASE NOTE!!!

Instructions:

1. Your answer must be completed on a Unisa mark-reading sheet.
2. The assignment consists of 10 statements.
3. You must select the accurate one.

Marking of the assignment:

1. Each answer carries one mark.
2. No mark will be awarded for an incorrect answer.
3. No mark will be awarded for an unanswered question.

4. The assignment is not marked negatively: that is, marks will not be deducted for incorrect answers

Assessment of the assignment:

The assignment will count 10% towards your year mark. If you do not submit the assignment, you will **not** be admitted to the examination.

The information that follows is extremely important. It deals with the instructions on how to complete and submit the assignment. **Please read this information very carefully before you start with the assignment.**

1. Please **consult** the brochure *my Studies @ Unisa* for instructions on how to use and complete a mark-reading sheet, as well as an example of an orange mark-reading sheet used for assignment purposes. **Follow the instructions very carefully.** Please ensure that your name, address, student number, unique number, module code and assignment number appear on the mark-reading sheet, and that this information is correct.
2. **Please use an HB pencil when you fill in the mark-reading sheet. Please do not use a pen when you complete the mark-reading sheet.** Please mark the number that that you choose next to the relevant extract.
3. Each year a number of students submit faulty mark-reading sheets that cannot be processed by the computer. Sheets that are rejected by the computer will be returned to students without being marked.
4. You may also submit the assignment via *myUnisa*. **Do not fax the assignment to the University. Also, do not fax or e-mail the assignment to the lecturers.**
5. Do not submit the assignment a second time. The computer will simply reject this assignment as a duplicate assignment.
6. **Make sure that you submit the mark-reading sheet in time for the University to receive it by the closing date. No extension will be granted for the submission of the assignment, since the assignment is marked by the computer.**
7. Students who submit the assignment long before the closing date will have to wait for their results until the assignment is marked by the computer. **No results will be available before the closing date of the assignment.**
8. Soon after the closing date of the assignment you will receive a computer printout giving your answers, the correct answers to the questions (ie the lecturer's answers) and your mark for the assignment.
9. The Assignment 01:(multiple-choice question assignment) consists of 10 questions. Make sure that you answer all the questions on the same mark-reading sheet! These questions cover the entire LCP4804 study material and the compulsory readings in your prescribed/recommended books. Each question counts one mark.
10. This assignment counts 10 marks. The mark that you obtain for this assignment will form part of your year mark and may count towards your final mark, if you obtain a subminimum of 40% in the examination.
11. The detailed commentary on Assignment 01 (multiple-choice question assignment) will be sent to you in another tutorial letter together with the commentary on Assignment 02 (written assignment) so that you can check your answers by using the commentaries. Remember - the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

ASSIGNMENT 01: MULTIPLE-CHOICE QUESTION ASSIGNMENT**CLOSING DATE: 17 August 2018****UNIQUE NUMBER FOR LCP4804 STUDENTS: 841822**

The assignment consists of 10 statements. Answer **all** the questions with an HB pencil on the mark-reading sheet provided. **Please do not use a pen when you complete the mark-reading sheet.** There is a list of study materials (eg under Question 1). From those materials choose the one that is associated with the statement below(eg under Answer 1).If you study those materials you will find the one from which the statement comes. Thereafter please mark the number from which the statement comes as your answer by making a mark against it. **You may not choose more than one answer.**

Question 1

1. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
2. *Fanti v Boto and Others* 2008 (5) SA 405 (C)
3. *Mthembu v Letsela and Another* 1997 (2) SA 936 (T)
4. *Mayelane v Ngwenyama and Another* 2013 (8) BCLR 918 (CC)

Answer 1 (match the following answer with the corresponding case or statute in the above list).

a widow may remain at the deceased's homestead and continue to use the estate property, and may not be ejected at the whim of the heir.

Question 2

1. *Mayelane v Ngwenyama and Another* 2013 (8) BCLR 918 (CC)
2. Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009
3. *Ngwenyama v Mayelane* 2012(10) BCLR 1071 (SCA)
4. *Pilane and Another v Pilane and Others* 2013 (4) BCLR 431 (CC)

Answer 2 ((match the following answer with the corresponding case or statute in the above list).

The purpose of the Recognition of Customary Marriages Act 120 of 1998 is to protect all women, not just a particular woman.

Question 3

- 1 *Shilubana and Others v Nwamitwa* 2007 (2) SA 432 (SCA)
- 2 *Gumede v President of the Republic of South Africa* 2009 (3) BCLR 243 (CC)
- 3 *Shilubana v Nwamitwa* 2008 (9) BCLR 914 (CC)
4. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)

Answer 3 (match the following answer with the corresponding case or statute in the above list).

Past practice of customary law continues to apply until it is clear that a contemporary practice has since developed.

Question 4

1. *Pilane and Another v Pilane and Others* 2013 (4) BCLR 431 (CC)
2. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)
3. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
4. Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

Answer 4 (match the following answer with the corresponding case or statute in the above list)

The purpose of the changes is to give effect to the provisions of *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC).

Question 5

1. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
2. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)
3. *Shilubana v Nwamitwa* 2008 (9) BCLR 914 (CC)
4. Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

Answer 5 (match the following answer with the corresponding case or statute in the above list).

The Act was part of a comprehensive exclusionary system of administration imposed on Africans, ostensibly to avoid exposing them to a result which, 'to the Native mind', would be 'both startling and unjust'.

Question 6

1. Isondlo
2. Ukungena
3. Ukwethula
4. Ukufakwa

Answer 6 (match the following answer with the corresponding case, statute or other source material above)

Goods delivered as *lobolo* for a daughter of a junior house are indicated to defray a debt owed to a senior house.

Question 7

1. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)
2. *Mabuza v Mbatha* 2003 (7) BCLR 43 (C)
3. *Maluleke v Minister of Home Affairs* Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported)
4. *Gumede v President of the Republic of South Africa* 2009 (3) BCLR 243 (CC)

Answer 7 (match the following answer with the corresponding case or statute in the above list)

Customary marriage negotiations coupled with indications that the marriage was "entered into" or "celebrated" are important in deciding that there is a valid customary marriage.

Question 8

1. Recognition of Customary Marriages Act 120 of 1998
2. National House of Traditional Leaders Act 22 of 2009.
3. Traditional Leadership and Governance Framework Act 41 of 2003
4. Constitution of the Republic of South Africa, 1996

Answer 8 (match the following answer with the corresponding case or statute in the above list)

A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendment to, or repeal of, that legislation or those customs.

Question 9

1. Traditional Leadership and Governance Framework Act 41 of 2003
2. *Shilubana v Nwamitwa* 2008 (9) BCLR 914 (CC)
3. *Gumede v President of the Republic of South Africa* 2009 (3) BCLR 243 (CC)
4. *Nwamitwa v Philia and Others* 2005 (3) SA 536 (T)

Answer 9 (match the following answer with the corresponding case, statute or other source material above)

Where the candidate is not suitable, the traditional authority may play a more direct role.

Question 10.

1. *Mabuza v Mbatha* 2003 (7) BCLR 43 (C)
2. *Shilubana v Nwamitwa* 2008 (9) BCLR 914 (CC)
3. *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
4. *Bhe v Magistrate Khayelisha and Others* 2005 (1) BCLR (1) (CC)

Answer 10 (match the following answer with the corresponding case or statute in the above list).

The successor looks after the dependants of the deceased and administers the family property on behalf of the entire family.

TOTAL=10X2 [20]

ASSIGNMENT 02: WRITTEN ASSIGNMENT

CLOSING DATE: 17 August 2018

UNIQUE NUMBER: 871822

Answer the following questions. You must submit a proper assignment with a cover page, table of contents, footnotes and a bibliography. The length of the **CONTENTS** of the assignment (ie the answers of the assignment from the first to the last question) must not exceed **4 typed** or **5 handwritten** pages.

IMPORTANT:

In questions 1, 2 and 3 below you must examine the cases listed there to reveal the level of transformation that the courts have effected on customary law.

QUESTION 1

Give the names of the parties; the legal question that was answered by the court, the reasons for judgment (*ratio decidendi*) and the decision of the court.

Examine the transformation of the post-apartheid customary law of marriage:

1. *Mabuza v Mbatha* 2003 (7) BCLR 43 (C)
2. *Mabena v Letsoalo* 1998 (2) SA 1068 (T)
3. *Ngwenyama v Mayelane* 2012(10) BCLR 1071 (SCA)
4. *Mayelane v Ngwenyama and Another* 2013 (8) BCLR 918 (CC)

(5)

Question 2

Give the names of the parties; the legal question that was answered by the court, the reasons for judgment (*ratio decidendi*) and the decision of the court

Examine the transformation of the post-apartheid customary law of succession

1. *Bhe v The Magistrate Khayelitsha; Shibi v Sithole; Human Rights Commission v President of Republic of South Africa* 2005 (1) BCLR 580 (CC)),
2. *Shilubana and Others v Nwamitwa* 2008 (9) BCLR 914 (CC)

(5)

Question 3

Examine the transformation of the nature and meaning of post-apartheid customary law

1. *Alexkor Ltd and Another v Richtersveld Community and Others* 2003 (12) BCLR 1301 (CC)
2. *Pilane and Another v Pilane and Others* 2013 (4) BCLR 431 (CC))

(5)

Question 4

Choose anyone of the following indigenous African cultural institutions to illustrate the operation of the philosophy: *umntu ngumntu ngabantu/motho ke motho ka batho*. Whatever you choose make sure that you apply these attributes of ubuntu - communal living, group solidarity, responsibility, accountability, generosity, shared belonging, the ethos of co-operation and the ethic of reciprocity.

1. Isondlo
2. Ukungena
3. Ukwethula
4. Ukufakwa

(5)

TOTAL = [20]

Good advice!!!

After completing this assignment do not rest. Go straight to assignment 3 (below) and practise all those questions for examination purposes. If you do so the examination day will be your nicest day of the semester.

APPENDIX C: SELF-ASSESSMENT; BOTH SEMESTERS

(B) ASSIGNMENT 03: SELF-ASSESSMENT ASSIGNMENT

PLEASE NOTE!!! PLEASE NOTE!!!

The information that follows is extremely important. It deals with the instructions on how to complete and mark the assignment, as well as the content and the purpose of the assignment. **Please read this information very carefully before you start with the assignment.**

1. **Assignment 03 is a self-evaluation assignment.** During your life as a lawyer, you will have to evaluate your own arguments and submissions and you should, therefore, acquire this skill as soon as possible.
2. The questions in Assignment 03 cover all your study material. Since the questions are similar to the kinds of questions you may expect in the examination, you should view this assignment as a **valuable revision exercise in your examination preparation.**
3. After you have answered the assignment questions, **please evaluate your answers by using the commentary which we will send to you in an additional tutorial letter.** In this commentary, we give you the answers to the questions as well as the mark allocation (in round brackets) for the facts that you should have mentioned. The purpose of this is to show you how to approach and answer a question. The knowledge obtained in this way can thus then be applied when answering the questions of the other assignments and the examination.

NOTE: Please do not submit this assignment to us for marking. We repeat: this assignment is a self-evaluation assignment and should not be handed in for marking. If you have any difficulties with any of the questions in the assignment, please contact us.

SELF-EVALUATION QUESTIONS

Answer the following questions as seriously as possible. The exam will consist of either four questions of 25 marks each or five questions of 20 marks each from the following sets of questions.

Section A The impact of legal transformation on the customary marriage laws:

Apply the provisions of the Recognition of Customary Marriages Act 120 of 1998 as you examine the decisions regarding the validity or otherwise of the customary marriages concerned. (Remember to start case discussion properly by giving the **names of the parties**; the **legal question** that was answered by the court, the **reasons for judgment** (*ratio decidendi*) given by the court and the **decision** of the court). In each case your comment must cover your views on whether the court showed sufficient appreciation for African values and the values of the Constitution.

- (a) *Mthembu v Letsela and Another* 1997 (2) SA 936 (T), *Mthembu v Letsela and Another* 1998 (2) SA 675 (T) and *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA)
- (b) *Maluleke v Minister of Home Affairs* Case no 02/24921 [2008] ZAGPHC 129 (9 April 2008) (unreported), *Motsoatsoa v Roro* All SA 324 (GSJ), and *Fanti v Boto and Others* 2008 (5) SA 405 (C), *Mabena v Letsoalo* 1998 (2) SA 1068 (T).
- (c) *Ngwenyama v Mayelane* 2012(10) BCLR 1071 (SCA) and *Mayelane v Ngwenyama and Another* 2013 (8) BCLR 918 (CC)

Section B The impact of legal developments on the customary law of succession

Apply the provisions of the Reform of the Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 to test the validity of the following judgments

(Remember to start case discussion properly by giving the **names of the parties**; the **legal question** that was answered by the court, the **reasons for judgment** (*ratio decidendi*) given by the court and the **decision** of the court). In each case your comment must cover your views on whether the court showed sufficient appreciation for African values and the values of the Constitution.

- (d) *Mthembu v Letsela and Another* 1997 (2) SA 936 (T), *Mthembu v Letsela and Another* 1998 (2) SA 675 (T) and *Mthembu v Letsela and Another* 2000 (3) SA 867 (SCA).
- (e) *Bhe* cases (*Bhe v The Magistrate Khayelitsha* 1998 (3) 2004 (1) BCLR 27 (C), *Bhe v The Magistrate Khayelitsha*; *Shibi v Sithole*; *Human Rights Commission v President of Republic of South Africa* 2005 (1) BCLR 580 (CC)),
- (f) *Nwamitwa v Philia and Others* 2005 (3) SA 536 (T) ; *Shilubana* cases (*Shilubana and Others v Nwamitwa* 2007 (2) SA 432 (SCA) and *Shilubana and Others v Nwamitwa* 2008 (9) BCLR 914 (CC).

Section C The development of the concept of living customary law under the Constitution

Apply the evolving principles in post-apartheid customary law

(Remember to start case discussion properly by giving the **names of the parties**; the **legal question** that was answered by the court, the **reasons for judgment** (*ratio decidendi*) given by the court and the **decision** of the court). In each case your comment must cover whether the court showed sufficient appreciation for African values and the values of the Constitution.

Mabuza v Mbatha 2003 (7) BCLR 43 (C)

Mabena v Letsoalo 1998 (2) SA 1068 (T)

Alexkor Ltd and Another v Richtersveld Community and Others 2003 (12) BCLR 1301 (CC)

Shilubana and Others v Nwamitwa 2008 (9) BCLR 914 (CC).

Bhe v The Magistrate Khayelitsha; *Shibi v Sithole*; *Human Rights Commission v President of Republic of South Africa* 2005 (1) BCLR 580 (CC)),

Pilane and Another v Pilane and Others 2013 (4) BCLR 431 (CC)

Section D The indigenous normative values of customary law found in concepts such as ukufakwa, isondlo and others that indicate the centrality of ubuntu in African traditions

- 1 Study the elements of the concepts of ukufakwa, isondlo and others to determine the operation of such features of ubuntu such as communal living, group solidarity, shared belonging, collective ownership, the ethos of co-operation and the ethic of reciprocity.
- 2 Evaluate the concept of communal legal personality in terms of which the corporate family home as represented by the family head is liable for individual family members' delictual and contractual obligations and the impact of the notion of majority age as entrenched in the Children's Act 38 of 2005 on this liability since the indigenous principle of primogeniture and the constitutional right to equality co-exist in our law.