

Tutorial Letter 101/3/2018

African Customary Law

IND2601

Semesters 1 and 2

**Department Public, Constitutional and
International law**

This tutorial letter contains important information
about your module.

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Dear Student

1 INTRODUCTION

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 year. 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!

1.1 Tutorial Matter

The department of Despatch should supply you with the following study material for this module:

- Study Guide
- Tutorial letters 101 and 301 at registration and others later

Apart from Tutorial Letters 101 and 301, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to students as soon as they are available or needed (for instance, for feedback on assignments).

If you have access to the internet, you can view the study guides and tutorial letters for the modules for which they are registered on the University's online campus, *myUnisa*, at <http://my.unisa.ac.za>.

PLEASE NOTE: Your lecturers cannot help you with missing study material

2 PURPOSE AND OUTCOMES

The following purpose statement and outcomes may be a bit different to those stated in the study guide. However, these below are the updated ones and they do not deviate much from the ones mentioned in the guide.

2.1 Purpose

This module seeks to expose students to constitutionally transformative principles of customary law. More specifically, the module aims to equip students with valuable knowledge and skills as well as competencies to enable them to analyze 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 traditional leadership exercise its power), and to formulate legal arguments and to apply their knowledge to practical problems that may arise when applying the law to those affected by it. In teaching this module, the transformative Constitutional values of equality, human dignity etc are infused in interpreting and fostering reform of some customary law principles not aligned with such values to reflect the living realities of the people affected by this law. Whilst the module seeks to incorporate ideas and values of the people affected by customary law, it will foster the values of humanness and gradueness on the student's attitudes in the application of this law.

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:

Identify, explain and critically analyze the various principles, theories relevant to customary law.

Assessment criteria

- Terms, rules, concepts and established principles as well as theories relating to the various themes of African customary law are synthesized.
- Critically evaluate the principles, rules and theories applicable to African customary law.
- Demonstrate an understanding of terminology relevant to African customary law.

Outcome 2:

Understand the nature of customary law principles and apply the Constitutional values and provisions that impact on it.

Assessment criteria

- Describe and explain the relevant principles of the Constitution that impact on the interpretation of principles of African customary law.
- Identify the legal issues of customary law that are potentially not aligned to Constitutional values and provisions.
- Apply the law to the facts in order to come to a reasoned Constitutional conclusion

Outcome 3:

State applicable legislation and analyze court judgements to the various legal problems involving customary law principles.

Assessment criteria

- State the relevant statutory provisions to material facts and court's rationale in view of the material facts
- Apply the law to the facts of hypothetical scenarios and discuss the relevant legal precedents with regard to legal issues.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

| | |
|----------------------------|--|
| Lecturer's name | Mrs NFDlamini-Ndwandwe |
| Building and office number | Cas van Vuuren 7-70 |
| E-mail Address | dlaminf@unisa.ac.za |
| Telephone number | 012 429 8792 |

| | |
|----------------------------|--|
| Lecturer's name | Mr RB Mokomane |
| Building and office number | Cas van Vuuren 7-04 |
| E-mail Address | Emokomr@unisa.ac.za |
| Telephone number | 012 429 2394 |

| | |
|----------------------------|--|
| Lecturer's name | Dr DD Ndimma |
| Building and office number | Cas van Vuuren 7-79 |
| E-mail Address | ndimadd@unisa.ac.za |
| Telephone number | 012 429 2184 |

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. **Email and Telephone numbers are included above and you might also want to write to us. Letters should be sent to:**

The Module Leader (IND2601)

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 channeled to the respective departments.

4 MODULE RELATED 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 book

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:

Bekker, JC, Rautenbach, C. 2014. *Introduction to legal pluralism in South Africa*. 4th edition. Durban: Lexis Nexis, Butterworths.

4.2 Electronic reserves (e-reserves)

There are no prescribed sources placed on e-reserves for this module.

4.3 Library services and resources information

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

For detailed information, go to <http://www.unisa.ac.za/library>. For research support and services of personal librarians, click on "Research support".

The library has compiled a number of 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>

The following legislation is referred to and used for your studies in this module.

- **The recognition of Customary Marriages Act 120 of 1998**
- **The Traditional Leadership and Governance Framework Act 41 of 2003 as amended by Act 23 of 2009.**
- **Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009**

Please make sure that you get copies of these statutes. They are available from the South African Government website www.polity.org.za.

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 (e.g 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

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**.

Tutorials

Tutorials are regular meetings of students under the leadership of a tutor. The tutor leads you through aspects of the study material with which you are experiencing difficulties.

A face-to-face tutorial is an organized session where students and tutors meet regularly at a common venue and at scheduled times to tackle problems involving their studies. A face-to-face tutorial has a number of advantages:

- It provides you with great opportunities to interact with your tutors and other students and get a better understanding of the course content.
- It encourages you to actively participate in the tutorial sessions
- It helps you to build a relationship with other students
- Tutorials are available at UNISA Learning Centers throughout the country

6 STUDY PLAN

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

Assignments and learning

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning.

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 analyze the previous examination paper to get an idea of our general approach to setting examination questions. Also very important are the activities, and the feedback, provided at the end of each lecture in your study units, provided for in the study guide. Note that the questions differ from year to year, 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 practical's for this module

8 ASSESSMENT

8.1 Assessment criteria

To answer essay or problem-type questions satisfactorily, you must work through the study material carefully. The following basic guidelines may be of help:

- Structure your answer properly.
- Your answer must be coherent, based on sound legal arguments, and substantiated and supported by referencing to relevant authority (legislation, case law, articles by legal writers and so on).
- Language must be clear and grammatically and stylistically correct.
- If possible, type the assignment (in at least 1,5 line spacing). If you are unable to submit a typewritten answer, you may submit a **NEAT AND LEGIBLE** handwritten answer.

The assessment criteria set out in section 2 of this tutorial letter will give you a good idea of what is expected of you when answering the written assignment.

8.2 Assessment plan

Assessment Plan

Information about the chosen assessment method and mode is clearly communicated to you in this tutorial letter below.

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 Assignment numbers

8.3.1 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 20 questions.
- Assignment 02 is a written assignment which is out of 30 marks.
- Assignment 03 is a self-evaluation assignment which consists of 5 questions, and is **not to be submitted**.

In some cases, additional assessment might be available on the *myUnisa* site for your module. For students attending tutorial sessions, tutors may also set additional tasks and give feedback in class.

8.3.2 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

8.4 Assignment due dates

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

FIRST SEMESTER:

- ☐ 16 March 2018 for Assignment 01 (COMPULSORY [MULTIPLE CHOICE])
- ☐ 29 March 2018 for Assignment 02 (COMPULSORY [WRITTEN])

SECOND SEMESTER:

- ☐ 30 August 2018 for Assignment 01 (COMPULSORY [MULTIPLE CHOICE])
- ☐ 17 September 2018 for Assignment 02 (COMPULSORY [WRITTEN])

8.5 Submission of assignments

You may submit your written assignments and assignments completed on mark-reading sheets either by post **or** submitted by Mobile MCQ (Multiple Choice Question) **or** electronically via *myUnisa*. 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 (e.g. 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 (e.g. 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

8.6 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.

APPENDIX A: FIRST SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 01: MULTIPLECHOICE QUESTIONS

ASSIGNMENT DUE DATE: 16 MARCH 2018

UNIQUE NUMBER: 724086

Instructions

- Your answer must be completed on a Unisa mark-reading sheet.
- The assignment consists of 20 statements.
- You must select the one which is most accurate.

Marking of the assignment:

- Each answer carries one mark.
- No mark will be awarded for an incorrect answer.
- No mark will be awarded for an unanswered question.

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

Assessment of assignments

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 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 20 questions. Make sure that you answer all the questions in both these questions on the same mark-reading sheet! These questions cover the entire IND2601 study guide and the compulsory readings in your prescribed book. Each question counts one mark.
- 10 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.
- 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: MULTIPLECHOICE QUESTIONS
ASSIGNMENT CLOSING DATE: 16 MARCH 2018
UNIQUE NUMBER: 724086

The assignment consists of 20 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.** Please mark the number of the statement that you choose next to the number of the relevant question. **You may choose only one statement for each question.**

QUESTION 1

One of the indications that fundamental rights have priority over customary law is that the...

- 1) rights in the Bill of Rights may be limited by any law.
- 2) courts must promote the values that underlie an undemocratic society.
- 3) Bill of Rights is only applicable to customary law.
- 4) Constitution is the supreme law.

QUESTION 2

Specialized and unspecialized systems are different because in the unspecialized systems.....

- 1) emphasis falls strongly on the group
- 2) a transgression of the law and legal rules will have certain, specific consequences for the transgressors
- 3) relations are governed by law
- 4) decisions are only taken by the family head.

QUESTION 3

Which of the following factors influenced a person's status in customary law?

- 1) wealth
- 2) class
- 3) popularity
- 4) rank

QUESTION 4

The traditional indigenous marriage.....

- 1) was dissolved by the husband and wife as individuals
- 2) could only be dissolved by a court of law
- 3) resulted in the establishment of a new house estate
- 4) could only be concluded between individuals who were majors

QUESTION 5

Which of the following statement is **NOT** applicable where either of the prospective spouses to a customary marriage is a minor?

- 1) both his or her parents or if he or she has no parents, his or her legal guardian must consent to the marriage
- 2) the commissioner of child welfare may grant consent to the marriage if the consent of the parent or guardian cannot be obtained
- 3) the commissioner of child welfare may give consent even if either of the parents or guardian refuses to grant consent
- 4) the Minister of Home Affairs may grant written permission to conclude the marriage

QUESTION 6

A woman in customary law...

- 1) may never inherit property from her deceased father.
- 2) has equal status and capacity with her husband in a customary marriage.
- 3) cannot acquire and dispose of assets if she is a wife in a customary marriage.
- 4) can succeed to the position of family head at her husband's discretion.

QUESTION 7

Which of the following statements apply to the *ukutholeka* custom?

- 1) It is practised by all Sotho tribes
- 2) It entails that the wife is "kidnapped" by her people
- 3) It is used for the maintenance of the woman
- 4) It means that the *lobolo* is delivered in instalments.

QUESTION 8

Section 211(3) of the 1996 Constitution has the following implications:

- 1) The recognition and application of customary law is subject to the Bill of Rights.
- 2) All courts may apply and must recognise customary law.
- 3) It is not necessary for judges to have any formal training in customary law.
- 4) The recognition and application of customary law is subject to general legislation.

QUESTION 9

In customary law, house property.....

- 1) belongs to a particular house under the household as a whole.
- 2) is unilaterally controlled by the family head.
- 3) includes property of the family head's mother's house to which he has succeeded.
- 4) may be defined as property that belongs to a person who has acquired it, although it may be under the control of the family head.

QUESTION 10

In the case of *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae)* 2005 (1) BCLR 1 (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated thereunder to be unconstitutional and invalid because.....

- 1) the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour
- 2) the combined effect of section 23 and the regulations was to put in place a succession scheme which discriminated on the basis of race and colour applying only to white people
- 3) the discrimination it perpetrated was an affront to the dignity of white persons.
- 4) it was inconsistent with the right to life guaranteed in section 11 of the Constitution

QUESTION 11

The following are some of the main principles of the customary law court.

- 1) Only adult males are free to attend the court sessions
- 2) The sessions of indigenous courts are held in private.
- 3) All parties must be represented during trials.
- 4) The onus is on the accused to prove his innocence in court

QUESTION 12

What purpose is the fine for contempt of court is used for in customary law.

- 1) The maintenance of the messengers.
- 2) Payment of the salary of the traditional council members.
- 3) As an offering to the ancestors.
- 4) Compensation to the court for the time its members spent on the case.

QUESTION 13

Which of the following are some of the known presumptions in indigenous law?

- 1) The children of a married woman are the children of her husband.
- 2) An adult is insane, until there is evidence to the contrary.
- 3) A person may voluntarily entrust pieces of personal clothing to a stranger.
- 4) A person may voluntarily lie prostrate to be hit at the back.

QUESTION 14

Which of the following persons are competent to testify in indigenous law:

- 1) only the parties to the trial
- 2) only children above the age of puberty
- 3) a co-accused for or against one another
- 4) an intoxicated person

QUESTION 15

The difference between a crime and a delict is that.....

- 1) In a crime the community is harmed, whereas in a delict individuals or agnatic group is harmed.
- 2) In a crime the individuals are harmed, whereas in a delict the community is harmed.
- 3) In a crime the property of an individual or group is affected whereas in a delict public property is affected.
- 4) A crime is punishable by community service whereas a delict is punishable by solitary confinement.

QUESTION 16

Which of the following statements is true in respect of punishment that a traditional leader may impose?

- 1) He may impose a sentence which entails death.
- 2) He may impose a fine of R400.
- 3) He may not impose corporal punishment.
- 4) He may impose a prison sentence.

QUESTION 17

Which of the following is an element of a crime in customary law ?

- 1) The act must be performed in broad daylight.
- 2) The act must be unlawful.
- 3) The act must be performed by several people against one person.
- 4) The act must be against cultural institutional actions.

QUESTION 18

In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, the power to appoint a king vests with the.....

- 1) president.
- 2) premiers of the different provinces.
- 3) National House of Traditional Leaders.
- 4) parliament.

QUESTION 19

The *ukungena* custom is applied where the.....

- 1) husband is incapable of having children.
- 2) husband dies without a son .
- 3) tribal wife dies without a son.
- 4) tribal wife is incapable of having children.

QUESTION 20

Which of the following will the Premier of a province engage in to recognise a senior traditional leader, headman or headwoman?

- 1) issue a notice in the provincial gazette recognising the person so identified
- 2) call a tribal council meeting to announce the appointment.
- 3) appoint the particular traditional leader to the relevant House of Traditional leaders.
- 4) organise a celebration of the appointment in the community.

ASSIGNMENT 02: WRITTEN ASSIGNMENT
CLOSING DATE: 29 MARCH 2018
UNIQUE NUMBER: 689858

Purpose of the assignment:

We assume that you have worked through all the content of the study guide and are now ready to answer some questions which can 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.

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. **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 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 assignments.**
5. **This assignment counts 30 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
CLOSING DATE: 29 MARCH 2018
UNIQUE NUMBER: 689858

QUESTION 1

1. State the general principles of customary law of succession and how succession differs from inheritance in a customary law context. (10)
 2. Discuss the case and judgement in the case of Shilubana v Nwamitwa 2008(9) BCLR 914 (CC) whilst addressing the following;
 - The facts of the case (5)
 - The legal question that was answered by the court (7)
 - The decision of the court and reasons for the judgement (8)
- TOTAL [30]**

APPENDIX B: SECOND SEMESTER COMPULSORY ASSIGNMENTS

MULTIPLE CHOICE ASSIGNMENT 01:
CLOSING DATE: 30 AUGUST 2018
UNIQUE NUMBER:
763919

Instructions

1. Your answer must be completed on a Unisa mark-reading sheet.
2. The assignment consists of 20 statements.
3. You must select the one which is most accurate.

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 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 20 questions. Make sure that you answer all the questions in both these questions on the same mark-reading sheet! These questions cover the entire IND2601 study guide 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 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 QUESTIONS
ASSIGNMENT CLOSING DATE: 30 AUGUST 2018
UNIQUE NUMBER: 763919

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.** Please mark the number of the statement that you choose next to the number of the relevant question. **You may choose only ONE statement for each question.**

Question 1

"Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people". This definition is found in

- 1) Section 1 of the Recognition of Customary Marriages Act 120 of 1998.
- 2) Section 1 of the Traditional Leadership and Governance Framework Act 41 of 2003.
- 3) Section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009.
- 4) Section 1 of the Black Administration Act 38 of 1927.

Question 2

The characteristic of customary law that is expressed as group versus individual orientation means that...

- 1) emphasis of the law is placed on the parties concerned in a dispute
- 2) although the family head was nominally the owner of the family property, he was not liable for debts of the other members of the family home
- 3) individuals function within the context of the group to which they belong
- 4) the rights emanating from the seduction of a girl could only be claimed from the perpetrator by herself to the exclusion of family members

Question 3

One of the following sections in the Constitution of South Africa does not signify recognition of customary law. Which one is it?

- 1) Section 2
- 2) Section 15
- 3) Section 31
- 4) Section 112

Question 4

Which of the following are some of the known presumptions in indigenous law?

- 1) The children of a married woman are the children of her husband.
- 2) An adult is insane until there is evidence to the contrary.
- 3) A person may voluntarily entrust pieces of personal clothing to a stranger.
- 4) A person may voluntarily lie prostrate to be hit at the back.

Question 5

The group has identified a leader amongst them and wish to appoint him as a senior traditional leader in their new community. Whom can they approach to make the appointment?

- 1) The President of South Africa.
- 2) The Premier of their Province.
- 3) The Provincial House of Traditional Leaders
- 4) The National House of Traditional Leaders.

Question 6

Which statement illustrates some of the steps that need to be taken by the appointing authority in effecting the appointment?

- 1) Notify the previous traditional leader of the intention to recognise and appoint the new leader.
- 2) Publish the appointment in the *Government Gazette*.
- 3) Notify the National House of Traditional leaders.
- 4) Send a copy of the letter of appointment to the office of the President of the Republic of South Africa.

Question 7

Section 4(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 lists functions of traditional councils.

- 1) 2
- 2) 4
- 3) 8
- 4) 12

Question 8

The conflict between customary law norms and provisions of fundamental rights outlawing discrimination....

- 1) is not specifically resolved by the Constitution
- 2) is directly regulated by section 2 and 36(i) of the Constitution
- 3) is directly regulated by section 5(8)(i) of the Constitution
- 4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

Question 9

The effect of the decision taken in the *Moseneke* case was that between 2002 and 2004, an intestate estate of a black person reported to the Master was administered in terms of ...

- 1) customary law.
- 2) native law.
- 3) zulu code.
- 4) common law.

Question 10

Ukuvusa custom may be applied if ...

- 1) a married man dies childless.
- 2) an unmarried male dies.
- 3) a female dies childless.
- 4) the wife cannot bear children.

Question 11

The Recognition of Customary Marriages Act 120 of 1998 recognizes polygynous marriages, defined as

- 1) a woman marrying more than one man.
- 2) a man marrying more than one woman.
- 3) a woman marrying another woman.
- 4) a man marrying not more than one woman.

Question 12

Indigenous African people observe legal rules and most rules for living, due to factors such as ...

- 1) faithfulness to Christian values.
- 2) fear of law-enforcing organs such as the police.
- 3) public opinion and the fear of punishment.
- 4) the availability of courts and judges.

Question 13

Specialised and unspecialised systems are similar because ...

- 1) emphasis falls strongly on the group.
- 2) the relations governed by law are the same.
- 3) concrete evidence is very important.
- 4) law originates with the ancestors.

Question 14

In terms of the Recognition of Customary Marriages Act 120 of 1998....

- 1) Marriages not registered in terms of the Act are void
- 2) Parties to an unregistered customary marriage are liable to a fine.
- 3) Unregistered marriages are awarded the status of a union.
- 4) Customary marriages are not invalid for failure to register them.

Question 15

A customary marriage can only be dissolved ...

- 1) on the ground of the irretrievable breakdown of the marriage.
- 2) a family court, or a competent division of the High court or a divorce court, or an equality court.
- 3) by the death of one of the spouses.
- 4) if the court is satisfied that one of the parties has committed adultery resulting to the birth of a child.

Question 16

Which of the following courts are **NOT** recognised in terms of the Constitution to apply indigenous law in South Africa?

- 1) Courts of Traditional leaders
- 2) Magistrate courts
- 3) Labour Courts
- 4) The Supreme court

Question 17

In terms of the court's decision in the case of *Shilubana v Nnamitwa* ...

- 1) traditional authorities may update and change customary law to fit in with the living customary law.
- 2) traditional communities may develop customary law in accordance with norms and values of the Constitution
- 3) traditional authorities should always align and develop customary law in accordance with norms and values of the Constitution.
- 4) traditional authorities should make sure that customary law is aligned with gender considerations.

Question 18

The following are some of the main principles of the customary law court.

- 1) Only adult males are free to attend the court sessions.
- 2) The sessions of indigenous courts are held in private.
- 3) All parties must be represented during trials.
- 4) The onus is on the accused to prove his innocence in court.

Question 19

Succession to traditional leadership in African customary law...

- 1) follows the principle of primogeniture.
- 2) is gender neutral.
- 3) is a hereditary system which follows the patrilineage.
- 4) only happens where the traditional leader dies without brothers.

Question 20

Which of the following is NOT an example of indigenous law determinations?

- 1) The allocation or refusal of residential and agricultural land.
- 2) The permission or refusal of immigration or emigration.
- 3) The permission or refusal to gather natural products from communal land.
- 4) The allocation of date to families for burial purposes.

ASSIGNMENT 02: WRITTEN ASSIGNMENT

CLOSING DATE: 17 September 2018

UNIQUE NUMBER: 821639

Purpose of the assignment:

We assume that you have worked through all the content of the study guide 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 with the assignment.**

Remember: Please number your Assignment 02 on the assignment cover before submitting it.

1. 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 the assignment to the University. Also, do not fax or e-mail your assignment to the lecturers.**
2. Please **consult** the brochure ***my Studies @ Unisa for instructions*** on how to complete assignment covers and submit written assignments.
3. **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 assignments.**
4. **This assignment counts 30 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.
5. 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.**

6. Your answers should, therefore, be concise and logical. This will also teach you to give similar answers in the examination.
7. **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

CLOSING DATE: 17 September 2018

UNIQUE NUMBER: 821639

1. Discuss the court's interpretation of section 7(6) of the Recognition of Customary Marriages Act 120 of 1998 for polygynous marriages (15)
2. Describe five of the main principles of the African customary court procedure and, in each instance, indicate the characteristics of African customary law reflected in it. (15)

APPENDIX C: NON COMPULSORY SELF ASSESSMENT

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.** When you join the legal profession, 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 the assignment cover all the study units in the study guide. 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.

QUESTION 1

1. Customary public law governs the relations between traditional authorities and subjects, and the relations between these authorities and subjects within the tribe. Discuss the subdivision of customary public law. (10)
2. Name and describe the factors that promote observance of customary law. (10)

TOTAL: [20]

QUESTION 2

1. Section 211(3) of the Constitution gives a clear and unambiguous recognition to customary law. What are the implications of this section? (5)
2. The main conflict is seen between customary law and fundamental rights in the constitution. Is there a clear solution to this problem? (5)
3. Distinguish between general property, house property and personal property. Give examples to substantiate your answer. (15)
4. State the general principles of succession and how succession differs from inheritance in a customary law context. (10)

TOTAL: [35]

QUESTION 3

1. The head of the family group, which consists of related agnatic groups, is not responsible for the conduct of its members, and has no obligation to negotiate for settlement of disputes between agnatic groups. Critically evaluate this statement. (10)
2. Discuss forms of punishment and the determination of punishment in African customary criminal law. (10)

TOTAL: [20]

QUESTION 4

1. Discuss mediation and judicial control according to common law of the Traditional leader's administrative actions (10)
2. Discuss the reform which has taken place in terms of the Recognition of Customary Marriages Act 120 of 1998, with regard to the proprietary consequences of a customary marriage. (10)
3. In modern customary/indigenous law the courts, excluding indigenous courts, recognise certain grounds for the purpose of dissolution of marriage. Discuss the grounds for dissolution of marriage in terms of the Recognition of Customary Marriages Act 120 of 1998. (5)

TOTAL: [25]

8.7 The examination

Examination Admission

Use your *my Studies @ Unisa* brochure for general examination guidelines and examination preparation guidelines.

The Compulsory Assignments and the Year Mark

IND2601 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.

Compulsory Assignments and admission to the Examinations

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.**

Examination Period

This module is a semester module. This 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.

Examination Paper

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% (i.e. 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

Previous examination papers are now available to students on *myUnisa*. You may, however, accept that examination questions can be similar to the questions asked in the activities in your study guide and in the assignments.

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, counselling, 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 IN CLOSING

We wish you all the best and good luck with your studies!