

IND2601

(496734)

May/June 2014

AFRICAN CUSTOMARY LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

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MR DD NDIMA

Closed book examination

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This paper consists of five (5) pages

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS

- 1 ANSWER ALL QUESTIONS**
- 2 SECTION A MUST BE ANSWERED ON A SEPARATE MARK READING SHEET**
- 3. PAY CAREFUL ATTENTION TO THE ALLOCATION OF MARKS AND ADAPT OUR ANSWER ACCORDINGLY**
- 4 WHEN ANSWERING A QUESTION, KEEP ITS SUBSECTIONS TOGETHER**

SECTION A

Question 1

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

(2)

TURN OVER

Question 2

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
- (2)

Question 3

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

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

Question 4

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
- (2)

Question 5

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
- (2)

TURN OVER

Question 6

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 (2)

Question 7

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 (2)

Question 8

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 (2)

Question 9

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 (2)

TURN OVER

Question 10

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

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

(2)

[20]**SECTION B****Question 2**

In 1990 Sifiso (a 17-year old boy) and Nikiwe (a 16-year old girl) and their respective fathers concluded an agreement on lobolo and this led to the conclusion of a customary marriage on 10 December 1990, which was not registered. Sifiso now intends to marry another woman, Ntombi, by civil rights

- (a) Advise Sifiso and Nikiwe whether a legally valid marriage came into existence between them on 10 December 1990 (5)
- (b) If your answer is in the affirmative, what would have been the proprietary consequences of the marriage between Sifiso and Nikiwe? (5)
- (c) Would a legally valid customary marriage have been concluded had the agreement to marry and conclusion thereof occurred in 2001? (5)
- (d) If your answer is in the affirmative, would the proprietary consequences be any different to those of the 1990 marriage? (5)
- (e) May Sifiso contract a civil marriage with Ntombi during the existence of his customary marriage with Nikiwe? (5)

[25]**Question 3**

Evaluate the following statements

- (a) In a traditional court, evidence is given under oath (5)
- (b) In indigenous law, there are certain crimes that can defile the community (5)
- (c) A traditional leader is empowered to punish anyone (5)

[15]

TURN OVER

Question 4

- (a) During an initiation ceremony, H incurs severe injuries as a result of D (the initiation master) H accuses D of assault with intent of grievous bodily harm. What defence can D raise in court? (5)
- (b) Discuss contempt of the ruler as a crime in African customary law (10)
- [15]**

Question 5

- (a) State the principles of customary law of succession, and how succession differs from inheritance in a customary law context (15)
- (b) Distinguish between general and particular administrative determination. Explain why the distinction is important? (10)
- [25]**

Total: {100}

PART 1 (GENERAL/ALGEMEEN) DEEL

STUDY UNIT e.g. PSY100-X
STUDIE EENHEID bv. PSY100 X

INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

PAPER NUMBER
VRAESTELNOMMER

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BV. PRETORIA)

STUDENT NUMBER
STUDENTENOMMER

UNIQUE PAPER NO.
UNIEKE VRAESTEL NR.

For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK

1. GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
2. MERK AS VOLG
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIF VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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Specimen only