

IND2601

(483032)

October/November 2015

AFRICAN CUSTOMARY LAW

Duration 2 Hours

100 Marks

EXAMINERS .

FIRST
SECOND

MRS NF DLAMINI-NDWANDWE
DR DD NDIMA

Closed book examination.

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This examination question paper consists of four (4) pages

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS

- 1 Answer all **five (5)** questions
- 2 Question 1 is a multiple-choice question and must be answered on a Unisa Mark reading sheet. When answering this question, please note that only one of the statements is correct. You must therefore mark only one of the squares for each question. If you mark more than one square for a specific question you will receive no mark for that answer. Also bear in mind that some of the statements given in a question might be partially correct. However you must select the one which is most accurate.

Questions 2, 3, 4, 5

- 3 Note the marks allocated to each question and ensure that your answer is in line with this mark

TURN OVER

QUESTION 1

- 1 The concrete versus the abstract approach that is characteristic of customary law means that
- 1) While specialised legal systems adopt the abstract approach, unspecialised legal systems are more concrete, real and visible in approach
 - 2) Specialized legal systems are marked by visible acts such as signing of a marriage register to signify the conclusion of a marriage contract
 - 3) In specialised legal systems, performance or part performance is required in the formulation of contracts
 - 4) proof for adultery in specialised legal systems was obtained by catching the culprit in the act and taking some of his personal belongings (2)
- 2 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 (2)
- 3 Which sentence below most accurately describes the effect of section 39 of the Constitution?
- 1) When interpreting the Bill of Rights, a court, tribunal or forum must consider foreign law
 - 2) When interpreting the Bill of Rights, a court, tribunal or forum may consider international law
 - 3) When interpreting the Bill of Rights, a court, tribunal or forum must promote the spirit, purport and objects thereof
 - 4) When interpreting the Bill of Rights, a court, tribunal or forum may promote the values that underlie an open and democratic society based on human dignity, equality and freedom (2)
4. Prior to 5 December 2002, intestate estates of black persons were administered by the
- 1) magistrate's court.
 - 2) tribal court
 - 3) chief's court
 - 4) High Court (2)

TURN OVER

- 5 In terms of the Recognition of Customary Marriages Act .
- 1) marriages not registered in terms of the Act are void
 - 2) parties to an unregistered marriage are liable to a fine
 - 3) unregistered marriages are awarded a status of a union
 - 4) the customary marriage is not void for failure to register. (2)
- 6 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)
- 7 Which of the following factors influenced a person's status in customary law?
- 1) Wealth
 - 2) Class
 - 3) Popularity
 - 4) Rank (2)
- 8 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)
- 9 *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 (2)
- 10 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 (2)
- [20]

TURN OVER

QUESTION 2

- (a) In unspecialised legal systems, the emphasis is on group rights. Explain this, illustrating with examples from the African customary marriage law and the African law of succession. (10)
- (b) Discuss the implications of sections 30 and 31 of the Constitution for the recognition of customary law (10)
- [20]**

QUESTION 3

- (a) Distinguish between status and rank in African customary law (5)
- (b) State and discuss the three fundamental requirements to conclude a valid customary law marriage in terms of the Recognition of Customary Marriages Act 120 of 1998 (15)
- (c) What are the legal implications for converting a customary marriage to a civil marriage? (5)
- [25]**

QUESTION 4

- (a) Explain the legal significance of *mangangahlaa* (10)
- (b) Discuss contempt of the ruler as a crime in African customary law (10)
- [20]**

QUESTION 5

- (a) During an initiation ceremony, H incurs severe injuries as a result of D's actions. H accuses D of assault with intent to cause grievous bodily harm. What defence can D raise in court? (5)
- (b) Indicate to what extent substitution can influence succession to traditional leadership (10)
- [15]**

Total: {100}

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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

1

INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

PAPER NUMBER
VRAESTELNOMMER

2

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

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STUDENT NUMBER
STUDENTENOMMER

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UNIQUE PAPER NO
UNIEKE VRAESTEL NR

8

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
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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 VOLTOOL
2. MERK AS VOLG ➡
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
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7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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