

**IND2601**

( 493625)

October/November 2016

**AFRICAN CUSTOMARY LAW**

Duration 2 Hours

100 Marks

**EXAMINERS**

FIRST

SECOND

MRS NF DLAMINI-NDWANDWE

DR DD NDIMA

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

**This paper consists of four (4) 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. **REFER TO RELEVANT CASE LAW OR AUTHORITY TO SUPPORT YOUR ANSWERS.**
4. **NOTE THE MARKS ALLOCATED TO EACH QUESTION AND ENSURE THAT YOUR ANSWER IS IN LINE WITH THIS MARK.**

**TURN OVER**

**SECTION A****Question 1**

Specialised and unspecialised systems are different because in the unspecialised 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 (2)

**Question 2**

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 (2)

**Question 3**

The betrothal agreement

- 1) is an enforceable contract in customary law
- 2) cannot be repudiated or terminated at any time
- 3) gives rise to a claim for breach of contract, in cases where it is terminated
- 4) creates certain rights and duties for the parties involved (2)

**Question 4**

In customary law, succession

- 1) takes place on the death of the principal wife
- 2) follows the principle of primogeniture
- 3) is a duty that cannot be relinquished or ceded
- 4) prevents a family head from transferring a younger son from one house to another house without a son during his lifetime (2)

**Question 5**

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 (2)

TURN OVER

**Question 6**

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

- 1) It is practised by some 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
- (2)

**Question 7**

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
- (2)

**Question 8**

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)

**Question 9**

The *ukungena* custom is applied where

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

**Question 10**

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
- (2)  
[20]

TURN OVER

**SECTION B****Question 2**

- (a) Give an exposition of the factors that promote observance of customary law (10)
  - (b) Discuss the implications of section 211(3) of the Constitution for the recognition of customary law (15)
  - (c) Distinguish between 'general succession' and 'special succession' (5)
- [30]**

**Question 3**

- (a) Discuss the grounds for dissolution of the various types of customary marriages (15)
  - (b) Indicate the value attached to the following evidential material in African customary law
    - (i) Hearsay evidence (3)
    - (ii) Extra-ordinary evidential material (7)
- [25]**

**Question 4**

- (a) (i) Legal representation was unknown in traditional customary courts. Evaluate this statement (5)
  - (ii) Explain the following maxim, *Molato ga o rere mongwe* ("one debt is not heard by another") (5)
  - (b) With reference to the case of *Shilubana v Nwamitwa (CCT3/07)[2008]ZACC 9; 2008 BCLR 914(CC); 2009 SA 66(CC)*, discuss the Constitutionality of the customary law rules on succession to traditional leadership (15)
- [25]**

**TOTAL: {100}**

PART 1 (GENERAL/ALGEMEEN)-DEEL 1

STUDY UNIT: PSY100-X  
STUDIE EENHEID: PSY100-X

INITIALS AND SURNAME  
VOORLETTERS EN VAN

DATE OF EXAMINATION  
DATUM VAN EKSAMEN

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

PAPER NUMBER  
VRAESTELNOMMER

STUDENT NUMBER  
STUDENTENOMMER

UNIQUE PAPER NO.  
UNIEKE VRAESTEL NR.

0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9

0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9  
0 1 2 3 4 5 6 7 8 9

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 IE 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 NUMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE)-DEEL 2

1 0 1 2 3 4 5  
2 0 1 2 3 4 5  
3 0 1 2 3 4 5  
4 0 1 2 3 4 5  
5 0 1 2 3 4 5  
6 0 1 2 3 4 5  
7 0 1 2 3 4 5  
8 0 1 2 3 4 5  
9 0 1 2 3 4 5  
10 0 1 2 3 4 5  
11 0 1 2 3 4 5  
12 0 1 2 3 4 5  
13 0 1 2 3 4 5  
14 0 1 2 3 4 5  
15 0 1 2 3 4 5  
16 0 1 2 3 4 5  
17 0 1 2 3 4 5  
18 0 1 2 3 4 5  
19 0 1 2 3 4 5  
20 0 1 2 3 4 5  
21 0 1 2 3 4 5  
22 0 1 2 3 4 5  
23 0 1 2 3 4 5  
24 0 1 2 3 4 5  
25 0 1 2 3 4 5  
26 0 1 2 3 4 5  
27 0 1 2 3 4 5  
28 0 1 2 3 4 5  
29 0 1 2 3 4 5  
30 0 1 2 3 4 5  
31 0 1 2 3 4 5  
32 0 1 2 3 4 5  
33 0 1 2 3 4 5  
34 0 1 2 3 4 5  
35 0 1 2 3 4 5

36 0 1 2 3 4 5  
37 0 1 2 3 4 5  
38 0 1 2 3 4 5  
39 0 1 2 3 4 5  
40 0 1 2 3 4 5  
41 0 1 2 3 4 5  
42 0 1 2 3 4 5  
43 0 1 2 3 4 5  
44 0 1 2 3 4 5  
45 0 1 2 3 4 5  
46 0 1 2 3 4 5  
47 0 1 2 3 4 5  
48 0 1 2 3 4 5  
49 0 1 2 3 4 5  
50 0 1 2 3 4 5  
51 0 1 2 3 4 5  
52 0 1 2 3 4 5  
53 0 1 2 3 4 5  
54 0 1 2 3 4 5  
55 0 1 2 3 4 5  
56 0 1 2 3 4 5  
57 0 1 2 3 4 5  
58 0 1 2 3 4 5  
59 0 1 2 3 4 5  
60 0 1 2 3 4 5  
61 0 1 2 3 4 5  
62 0 1 2 3 4 5  
63 0 1 2 3 4 5  
64 0 1 2 3 4 5  
65 0 1 2 3 4 5  
66 0 1 2 3 4 5  
67 0 1 2 3 4 5  
68 0 1 2 3 4 5  
69 0 1 2 3 4 5  
70 0 1 2 3 4 5

71 0 1 2 3 4 5  
72 0 1 2 3 4 5  
73 0 1 2 3 4 5  
74 0 1 2 3 4 5  
75 0 1 2 3 4 5  
76 0 1 2 3 4 5  
77 0 1 2 3 4 5  
78 0 1 2 3 4 5  
79 0 1 2 3 4 5  
80 0 1 2 3 4 5  
81 0 1 2 3 4 5  
82 0 1 2 3 4 5  
83 0 1 2 3 4 5  
84 0 1 2 3 4 5  
85 0 1 2 3 4 5  
86 0 1 2 3 4 5  
87 0 1 2 3 4 5  
88 0 1 2 3 4 5  
89 0 1 2 3 4 5  
90 0 1 2 3 4 5  
91 0 1 2 3 4 5  
92 0 1 2 3 4 5  
93 0 1 2 3 4 5  
94 0 1 2 3 4 5  
95 0 1 2 3 4 5  
96 0 1 2 3 4 5  
97 0 1 2 3 4 5  
98 0 1 2 3 4 5  
99 0 1 2 3 4 5  
100 0 1 2 3 4 5  
101 0 1 2 3 4 5  
102 0 1 2 3 4 5  
103 0 1 2 3 4 5  
104 0 1 2 3 4 5  
105 0 1 2 3 4 5

106 0 1 2 3 4 5  
107 0 1 2 3 4 5  
108 0 1 2 3 4 5  
109 0 1 2 3 4 5  
110 0 1 2 3 4 5  
111 0 1 2 3 4 5  
112 0 1 2 3 4 5  
113 0 1 2 3 4 5  
114 0 1 2 3 4 5  
115 0 1 2 3 4 5  
116 0 1 2 3 4 5  
117 0 1 2 3 4 5  
118 0 1 2 3 4 5  
119 0 1 2 3 4 5  
120 0 1 2 3 4 5  
121 0 1 2 3 4 5  
122 0 1 2 3 4 5  
123 0 1 2 3 4 5  
124 0 1 2 3 4 5  
125 0 1 2 3 4 5  
126 0 1 2 3 4 5  
127 0 1 2 3 4 5  
128 0 1 2 3 4 5  
129 0 1 2 3 4 5  
130 0 1 2 3 4 5  
131 0 1 2 3 4 5  
132 0 1 2 3 4 5  
133 0 1 2 3 4 5  
134 0 1 2 3 4 5  
135 0 1 2 3 4 5  
136 0 1 2 3 4 5  
137 0 1 2 3 4 5  
138 0 1 2 3 4 5  
139 0 1 2 3 4 5  
140 0 1 2 3 4 5

Specimen only