

IND2601

(474986)

October/November 2017

AFRICAN CUSTOMARY LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

MRS NF DLAMINI-NDWANDWE

SECOND

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 five (5) pages.

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS:

- 1 Answer all four (4) 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 might be partially correct. However, you must select the one which is most accurate.**

Questions 2, 3 AND 4.

- 3. Note the marks allocated to each question and ensure that your answers are in line with these marks**

TURN OVER

QUESTION 1

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 (2)
2. **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)
3. **Indicate which statement is NOT correct. The following can be regarded as good cause for a woman to terminate a betrothal agreement unilaterally**
 - 1) The man enters into an indigenous marriage with another woman during the betrothal period
 - 2) The man's morality, where a polygamous marriage was contemplated provided the woman condones this
 - 3) Continuous neglect, so that the woman's guardian has to instruct the lover to proceed with the marriage
 - 4) The man pays too much attention to other women and neglects his betrothed and her family (2)
4. **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)
5. **The right to culture that is protected under section 30 and 31 of the Constitution implies that the state must...**
 - 1) force all courts to apply and therefore recognise customary law
 - 2) ensure that the recognition of customary law is subject to the Bill of Rights
 - 3) preserve the existence and identity of cultural groups
 - 4) determine and pass legislation that is specifically applicable to customary law (2)

TURN OVER

6 “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 (2)

7. In customary law . .

- 1) a successor succeeds to the assets and all the debts of his predecessor in KwaZulu-Natal
- 2) succession is a duty that can be relinquished or ceded
- 3) a successor may never be removed from the line of succession i.e. disinherited
- 4) succession takes place only on the death of a predecessor, there is thus no question of succession while the family head is still alive (2)

8. Indicate which statement is **NOT** correct. According to African customary law ...

- 1) the head of an agnatic group is always liable for the conduct of members of his group
- 2) a stick-fight is not a recognized cultural institution and therefore injuries sustained during such a fight would be unlawful and tantamount to assault
- 3) it is accepted that a person may forcibly defend himself or his property, or other persons or their property, against an unlawful attack without being criminally liable
- 4) a small child and an insane person are not criminally liable for their unlawful conduct (2)

9. Which of the following is a constitutionally acceptable form of punishment in customary law?

- 1) The death penalty
- 2) A fine
- 3) Banishment
- 4) Imprisonment (2)

10. According to African customary law, the crime of rape occurs when a man...

- 1) unlawfully and intentionally hurts another's body
- 2) consents with a woman to have sexual intercourse
- 3) uses violence to force a woman not married to him to have sex with him
- 4) removes a woman's clothes to have sex with him (2)

[20]

TURN OVER

QUESTION 2

The main conflict is between customary law and the fundamental rights in the Constitution

- (i) Give two examples of the potential conflict between Constitutional principles and principles of customary law (6)
- (ii) Does the Constitution provide a clear solution to this problem? (2)
- (iii) State and briefly discuss the provisions in the Constitution which indicate how this conflict may be resolved (12)

[20]

QUESTION 3

(a) Evaluate the following statements

- (i) Section 3 of the Recognition of Customary Marriages Act 120 of 1998 (RCMA) retrospectively recognises all customary marriages in South Africa (5)
- (ii) Section 10 of the Recognition of Customary marriages Act 120 of 1998 (RCMA) allows parties married in terms of customary law to enter into a civil marriage with other parties (5)
- (iii) In the case of *Mayelane v Ngwenyama* [2013] 4 SA 415 (CC) the Court ruled that the first wife's consent is not necessary for her husband to contract a valid polygamous marriage with another woman (5)

- (b) State the general principles of succession in original customary law and discuss how succession differs from inheritance in a customary law context (10)
- (c) Explain how children as descendants of the deceased are defined in terms of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 (5)

[30]

QUESTION 4

- (a) Explain the legal significance of *mangangahlaa* (to tighten the jaw) during the resolution of African customary disputes (10)
- (b) Discuss rape as a crime in indigenous law (10)

TURN OVER

- (c) Discuss the validity of administrative actions by a ruler in terms of its purpose and its consequences (10)

[30]

TOTAL: {100}

PART 1 (GENERAL/ALGEMEEN)-DEEL 1

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

1

PAPER NUMBER
VRAESTELNOMMER

2

STUDENT NUMBER
STUDENTENOMMER

6

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 00

INITIALS AND SURNAME
VOORLETTERS EN VAN

3

DATE OF EXAMINATION
DATUM VAN EKSAMEN

4

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

5

UNIQUE PAPER NO.
UNIEKE VRAESTEL NR

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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. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE)-DEEL 2

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140 01 02 03 04 05

MARK READING SHEET INSTRUCTIONS

Your mark reading sheet is marked by computer and should therefore be filled in thoroughly and correctly

USE ONLY AN HB PENCIL TO COMPLETE YOUR MARK READING SHEET

PLEASE DO NOT FOLD OR DAMAGE YOUR MARK READING SHEET

Consult the illustration of a mark reading sheet on the reverse of this page and follow the instructions step by step when working on your sheet

Instruction numbers ① to ⑩ refer to spaces on your mark reading sheet which you should fill in as follows

- ① Write your paper code in these eight squares, for instance

P	S	Y	1	0	0	-	X
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- ② The paper number pertains only to first-level courses consisting of two papers

WRITE

0	1
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 for the first paper and

0	2
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 for the second. If only one paper, then leave blank

- ③ Fill in your initials and surname
- ④ Fill in the date of the examination
- ⑤ Fill in the name of the examination centre
- ⑥ WRITE the digits of your student number HORIZONTALLY (from left to right). Begin by filling in the first digit of your student number in the first square on the left, then fill in the other digits, each one in a separate square
- ⑦ In each vertical column mark the digit that corresponds to the digit in your student number as follows [-]
- ⑧ WRITE your unique paper number HORIZONTALLY
NB Your unique paper number appears at the top of your examination paper and consists only of digits (e.g. 403326)
- ⑨ In each vertical column mark the digit that corresponds to the digit number in your unique paper number as follows [-]
- ⑩ Question numbers 1 to 140 indicate corresponding question numbers in your examination paper. The five spaces with digits 1 to 5 next to each question number indicate an alternative answer to each question. The spaces of which the number correspond to the answer you have chosen for each question and should be marked as follows [-]
- ◆ For official use by the invigilator. Do not fill in any information here