

**IND2601**

( 480716)

May/June 2017

**AFRICAN CUSTOMARY LAW**

Duration 2 Hours

100 Marks

**EXAMINERS**FIRST  
SECONDMRS 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 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 implications of section 211(3) of the Constitution of the Republic of South Africa is that ...**

- (1) the recognition and application of customary law is subject to legislation that specifically deals with customary law
- (2) only customary courts may apply and therefore also recognise customary law
- (3) the recognition and application of customary law is subject to the Black Administration Act 38 of 1927
- (4) the Congress of Traditional Leaders of South Africa (CONTRALESA) will determine when customary law is applicable

**2. General property would include ...**

- (1) earnings of family members, including the earnings of a midwife and medicine woman
- (2) clothing, walking sticks, snuff boxes, necklaces and weapons.
- (3) property given to a woman on her marriage, such as household utensils and a certain beast that is given to her during her marriage, such as the *ubulungu* beast
- (4) property of the family head's mother's house to which he has succeeded

**3. A traditional leader ...**

- (1) may decide on any matter concerning nullity, divorce or separation in respect of a civil marriage between black people
- (2) may impose a punishment which entails death, mutilation, grievous bodily harm or imprisonment
- (3) is competent to hear any crime in accordance with common law, African customary law or any statutory crime referred to by the Minister.
- (4) is prevented from punishing any person, including a non-black, for contempt of his court in *facie curiae* (in the face of the court)

**4. 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 the status of a union.
- (4) the customary marriage is not void for failure to register

**5. 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 5(8)(i) of the Constitution
- (4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

**TURN OVER**

6. **Prior to 5 December 2002, intestate estates of black persons were administered by the ...**
- 1) magistrate's court.
  - 2) tribal court.
  - 3) traditional court
  - 4) High Court
7. **A customary marriage can only be dissolved ...**
- 1) on the ground of irretrievable breakdown of the marriage
  - 2) by 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
8. **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
9. **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
10. **The Sotho maxim "*kgosi ke kgosi ka batho*" (a king or ruler is a king or ruler through his people) means that the ruler must ...**
- (1) act in accordance with the will of his people
  - (2) consider the decisions of only his council when making decisions
  - (3) not be unfair when making administrative determinations
  - (4) consulted when members of his community make family decisions

[20]

TURN OVER

**QUESTION 2**

- (a) The world's legal systems differ in terms of their degree of specialisation. What is meant by "specialisation"? Explain the similarities between specialised and unspecialised legal systems (10)
  - (b) Distinguish between house rank and family rank in customary law (5)
  - (c) Explain what is meant by the free system of evidence (5)
  - (d) Distinguish between "defence" and "necessity" as grounds of justification in African customary law (5)
- [25]**

**QUESTION 3**

Chief Zikhonzi, a recently appointed traditional leader in Nongoma in KwaZulu-Natal, married his first wife, the then 17-year-old Nontombi, in 1998. As agreed, 30 head of cattle were delivered as lobolo to Mr Cele, her father. Immediately her father sent Nontombi to live in the chief's royal kraal. Now the chief plans to marry Boni as his second wife by means of a civil marriage in December 2017.

Meanwhile, Nontombi's brother, Madoda, from her father's second house, has paid lobolo to marry his wife, Noluntu. Their father allowed him to use the lobolo cattle received in respect of Nontombi's marriage.

Advise the families on the legal implications for the following:

- (i) the marriage between Chief Zikhonzi and Nontombi (6)
  - (ii) the legal consequences of the marriage between Chief Zikhonzi and Nontombi (5)
  - (iii) the legal status of their marriage if it were concluded in 2015 (8)
  - (iv) the status of the potential civil marriage between the chief and Boni as the second wife (5)
  - (v) the obligation incurred by Madoda's house against Nontombi's house for the marriage goods received for Nontombi (6)
- [30]**

TURN OVER

**QUESTION 4**

- (a) Discuss the provisions and principles stated according to the Traditional Leadership and Governance Framework Act 41 of 2003 for the appointment of the following categories of traditional leaders in South Africa
- (i) kings and queens
  - (ii) senior traditional leaders
  - (iii) Headmanship
  - (iv) acting traditional leaders
  - (v) deputy traditional leaders
- (15)
- (b) Discuss mediation as a way to control the ruler's administrative actions
- (10)
- [25]**

**TOTAL: {100}**

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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

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

PAPER NUMBER  
VRAESTELNOMMER

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

STUDENT NUMBER  
STUDENTENOMMER

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

INITIALS AND SURNAME  
VOORLETTERS EN VAN

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

DATE OF EXAMINATION  
DATUM VAN EKSAMEN

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

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

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

UNIQUE PAPER NO.  
UNIEKE VRAESTEL NR

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

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

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

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

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

## 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
---	---	---	---	---	---	---	---

- ② The paper number pertains only to first-level courses consisting of two papers

WRITE 

0	1
---	---

 for the first paper and 

0	2
---	---

 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