



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: IDL41B0
<u>SEMESTER</u>	: First
<u>EXAM</u>	: July 2020

<u>DATE</u>	: 17 July 2020	<u>SESSION</u>	: 08:00
	MR SC HELEBA		
<u>ASSESSOR(S)</u>	:		
<u>MODERATOR</u>	: Prof M WATNEY		
<u>DURATION</u>	: 3 HOURS	<u>MARKS</u>	: 80

NUMBER OF PAGES: 6 PAGES

INSTRUCTIONS:

1. This assessment is conducted electronically.
2. Students are expected to answer the questions within the open and close times of the assessment.
3. To complete the assessment, students must use the Microsoft Word Document answer sheet that has been uploaded on Blackboard to answer to questions.
4. Students must ensure the following:
 - The answer paper must be saved (named) with your surname, initials and the words “Final Exam” in the file name. For example, Heleba, SC Final Exam,
 - At the top of the answer sheet the following details must appear:
 - (i) Your surname and initials; and
 - (ii) Your student number.
 - There are three sections which must be clearly identified and answered on the answer paper.
 - It is your responsibility to ensure that you have emailed your answer paper before the closing time of the test.

5. Please take note of the following:

- Any answer paper that does not contain a student's details (e.g. surname / initials and student number), which makes it impossible to identify the student, will not be marked.
- You may not seek assistance of a fellow student or the tutor.
- You may not use any part of another student's answers to complete this assessment.
- You are reminded that all relevant rules and policies of the University and the Faculty apply to this assessment. For example, this means that you cannot cut-and-paste material other than your own work as answers for this assessment.
- By undertaking this online assessment, you will be deemed to have made the following declaration:
"I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorized assistance in this assessment".

Good luck with the test.

SECTION A – MULTIPLE CHOICE

Choose the correct answer among the options given below. Write **ONLY** the letter of the alphabet next to the number.

1. The concept of succession under customary law is understood to involve _____.
 - a. succession to the status of the deceased.
 - b. the inheritance of the deceased's assets.
 - c. both succession to status as well as inheritance of the assets.**
 - d. dependence on the deceased's wishes.
 - e. None of the above.

2. _____ of the Recognition of Customary Marriages Act 120 of 1998 promotes the application of living customary law as it states that customary must be negotiated, entered into or celebrated in terms of customary law.
 - a. Section 3(1)(a).
 - b. Section 4(1)(a).
 - c. Section 3(1)(b).**
 - d. Section 4(1)(b)
 - e. Section 6. _____

3. In *Moseneke v The Master of the High Court* 2001 (2) SA 18 (K), the following was found to be unconstitutional:
 - a. The distinction between customary marriages out of and those in community of property for the purposes of intestate succession.
 - b. The prohibition of extra-marital children from inheriting from intestate estate.
 - c. Customary rule preventing a woman from succeeding as chief of a tribe.
 - d. That deceased estates of black South Africans would be administered by a magistrate.**
 - e. Both (a) and (b) are correct.

4. In *Bhe and Others v Magistrate, Khayelitsha and Others* 2005 (1) BCLR 1 (CC) the court
 - a. found that it was unconstitutional to prohibit female daughters from inheriting from the intestate estate of their deceased natural parent under customary law.
 - b. found that it was unconstitutional to prohibit a female from succeeding as chief of a tribe.
 - c. found that section 23(1) of the Black Administration Act 35 of 1927 to be unconstitutional as it violates section 9(3) of the Constitution.
 - d. found it unconstitutional to prohibit an extramarital child from inheriting from the intestate estate of her deceased natural parent.
 - e. Both (a) and (c) are correct.**

5. Under the Recognition of Customary Marriages Act 120 of 1998, a divorce in customary law marriages is final when
 - a. **a divorce decree has been issued by a competent court.**
 - b. the bride's family has returned the *Lobolo* property.
 - c. the traditional leader has made a recommendation to the court.
 - d. the family council has made a recommendation to the court.
 - e. All of the above are correct.

6. The following is an *automatic* ground for divorce under living customary law:
 - a. witchcraft
 - b. adultery
 - c. **irretrievable breakdown of marriage**
 - d. desertion
 - e. infertility

7. The exclusion of extra-marital children from inheriting from the estate of a deceased Black person who died intestate was found to be unconstitutional in
 - a. *Ramuhovhi v President of the RSA* 2018 (2) BCLR 217 (CC).
 - b. ***Zondi v President of RSA* 1999 (11) BCLR 1313 (N).**
 - c. *Mayelane v Ngwenyama* 2013 (8) BCLR 918 (CC).
 - d. *Hlophe v Mahlalela* 1998 (1) SA 449 (T).
 - e. *Moseneke v The Master of the High Court* 2001 (2) SA 18 (K).

8. Section 1(1) of the Law of Evidence Amendment Act 45 of 1988 has been made redundant by _____ of the Constitution, 1996.
 - a. section 9(3)
 - b. **section 211(3)**
 - c. section 39(2)
 - d. section 10
 - e. section 11

9. The following are examples of quasi-contracts under customary law.
 - a. *Ukwenzelela* and *lobolo*.
 - b. *Sondlo* and *lobolo*.
 - c. ***Ukwethula* and *ukufakwa*.**
 - d. *Ukwethula* and *lobolo*.
 - e. None of the above is correct.

10. The concept of conflict of laws refers to
 - a. an engagement with the choice of law rules.
 - b. **the selection the most appropriate rule to apply.**
 - c. the resolution of an internal conflict only.
 - d. the resolution of an external conflict only.
 - e. Both (a) and (b) are correct.

SUB-TOTAL: SECTION A

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SECTION B – LEGAL CONCEPTS

QUESTION 1

Provide the legal concept represented by each of the following statements. For example; seduction or accessory liability.

- 1.1 Informal dispute resolution forums setup in the Townships when political leaders were incarcerated. (1)
People's law (courts)
- 1.2 A type of contract in customary law which does not meet all the requirements for a valid contract. (1)
Quasi-contract
- 1.3 The claim that a person has under customary law against the biological father for raising his child. (1)
Isondlo / maintenance
- 1.4 A practice that follows the conclusion of the *lobolo* negotiations and payment whereby the bride is introduced to the groom's ancestors by slaughtering a beast, among amaXhosa group, or dancing and sweeping in front of the kraal, among emaSwati group. (1)
Integration / ukumekeza
- 1.5 A concept of liability under customary law of contract in terms of which the family head is sued together with a family member for debts incurred by the family member with the family head's consent. (1)
Group liability / Co-liability / Accessory liability

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QUESTION 2

- 2.1 With reference to the relevant legislation, discuss how a conflict between two customary law systems is to be resolved (8)
Students expected to analyse the provisions of section 1(3) of the Law of Evidence Amendment Act 45 of 1988.
- 2.2 Distinguish between narrow and broad legal pluralism. (4)
See page 6, 1.21-2, of the textbook.
- 2.3 Give your opinion on whether non-registration of a customary marriage should result in the invalidity of such a marriage. State the current legal position before giving your opinion. (5)
Students expected to refer to the relevant provisions of the Recognition of Customary Marriages Act 120 of 1998, and discuss the pros and cons of non-registration not affecting the validity of customary marriages.
- 2.4 State the rights and duties of the keeper of a loaned animal in a farming out agreement. (4)
- **To care for the animal as if its his own**
- **May terminate contract on notice**
- **Entitled to its products except wool**
- **Must report and report loss if negligent**
- **allow owner to inspect and earmark animal**
- 2.5 Does a delictual claim against the family head, in customary law, fall away when he / she dies? Explain. (4)
No. That is because a claim does not prescribe under customary law of succession. The heir inherits both rights and duties.

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SECTION C – LONG QUESTIONS

QUESTION 1

Lesedi is the daughter and only descendant of Chief Kgositsile, a traditional leader of the Kamoso community. He passes away after a long illness. Chief Kgositsile is survived by his daughter and two brothers. In terms of the Kamoso custom where the Chief is survived by a female descendant, his brother will succeed him. Lesedi however demands to succeed her father but is prevented by customary law from doing so. She is confident she would do a better job than her uncle in serving the interests of her community. Lesedi approaches you for advice on the constitutionality of the Kamoso custom.

With reference to the relevant case law, advise Lesedi on the following:

- 1.1 The constitutionality of the Kamoso custom preventing her from succeeding her father as Chief of the tribe. (10)
Students expected to analyse and apply the findings in *Shilubane v Nwamitwa*.
- 1.2 Comment on any foreseeable challenges for the Kamoso custom resulting from having Lesedi succeeding her father. (5)
Students expected to say something about the limits of the law, in particular about the fact that these far-reaching judgments are not observed in rural communities.
- 1.3 Assume that Chief Kgositsile had other dependants than Lesedi. Would they all be entitled to share in Chief Kgositsile's estate? Explain by referring to the origin of the current legal position. (5)
Students expected to answer this question positively, referring to the Bhe case which extended the right to inherit from the deceased to all his descendants in terms of the common law intestate succession.

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QUESTION 2

Mthandeni is married to three wives under customary law. None of his wives have born a male child for him. He recently met Lindokuhle at a social event and hopes she will give him the male issue that he has been looking for. He marries Lindokuhle under customary law. Lindokuhle is however not satisfied with just being a customary law wife and wants a lavish "white" wedding. When Mthandeni breaks the news of Lindokuhle's desire for a "white wedding" to the existing wives none of them are happy. In fact, they demand that he first gives each of them a "white wedding" before Lindokuhle can have hers.

Mthandeni approaches you for advice on the rules regulating customary marriages in South Africa. In particular, advise Mthandeni on the following:

- 2.1 Whether it is possible to marry Lindokuhle under civil law. Explain. (5)
Students expected to discuss requirements for the validity of customary marriages as found in various sections of the RCMA, 1998. Ultimately the answer will be NO.

- 2.2 Assume that Lindokuhle was Mthandeni's only wife. Would your answer be any different to your answer in 2.1 above? Explain. (5)
Students to undertake the same analysis as in 2.2. This time the answer should be Yes.
- 2.3 Simangele is Mthandeni's third wife, and she wants know if she will get anything if her husband were to divorce her. Refer to the case in which the constitutional court has recently extended matrimonial protection to all the wives in a polygynous customary marriage as well as the nature and extent of that protection. (5)
Students to analyse and apply the finding in the Ramuhovhi case. The answer should be Yes.
- 2.4 In light of the decision mentioned in 2.3 above, comment on whether 7(6) of the Recognition of Customary Marriages Act 120 of 1998, still plays a role? (5)
Yes it does, as the Ramuhovhi decision complements the provisions of 7(6). Where the section falls short or is ignored, then one can fall back on the Ramuhovhi finding.

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SUB-TOTAL: SECTION C	[40]
GRAND TOTAL:	[80]