



FACULTY : LAW

PROGRAM : LLB

SUBJECT : INDIGENOUS LAW EXAMINATION

CODE : IDL2114B0

DATE : 09 JUNE 2021

DURATION : 3 HOURS

WEIGHT : 50 : 50

TOTAL MARKS : 60

EXAMINERS : MR SS NKOSI

MODERATOR : PROFESSOR M WATNEY

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INSTRUCTIONS:

1. This assessment is conducted electronically.
2. Answer all the questions on the answer paper.
3. Please write your surname, initials and student number on the answer paper.
4. All completed answer papers must be saved either in a Microsoft Word Document or PDF, and must be emailed before the closing time, 19h30 on 09 June 2020
5. **Email your answer paper to snkosi@uj.ac.za**
6. Submit only ONE answer paper
7. It is your responsibility to ensure that you have emailed your answer paper before the closing time of the examination.

8. Students must ensure the following:
- There are three sections which must be clearly identified and answered on the answer paper.
9. 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 students answers to complete this assessment.
 - You are reminded that all relevant rules and policies of the University and the Faculty applies to this assessment. In regard to the assessment, the normal academic integrity rules apply. 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".
10. Good luck with the examination.
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MODULE CODE: DL41B0

SECTION A – MULTIPLE CHOICE

1.1 South Africa is said to be a pluralistic legal order because -

- a) the common law is the dominant legal system in the country.
- b) the Natal Code of Zulu Law of 1898 is dominant.
- c) more than one legal system is recognised under the country's legal order.
- d) the Constitution, 1996 is the supreme law of the land.
- e) None of the above is correct.

1.2 "Any court may take judicial notice of indigenous law...in so far as such law can be ascertained readily and with sufficient certainty..." This statement represents the legal position with respect to customary law under the –

- a) Recognition of Customary Marriages Act 120 of 1998
- b) Black Administrative Act 38 of 1927
- c) Law of Evidence Amendment Act 45 of 1988
- d) The Constitution Act 108 of 1996
- e) Traditional Leadership and Governance Framework Act 41 of 2003

1.3 "The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law. This injunction (instruction) is found in the_____

- a) Recognition of Customary Marriages Act 120 of 1998
- b) Black Administration Act 38 of 1927
- b) Law of Evidence Amendment Act 45 of 1988
- c) Traditional Leadership and Governance Framework Act 41 of 2003
- d) Section 211 (3) of the Constitution Act 108 of 1996

1.4 Living customary law is accommodated by the following theory of law:

- a) Narrow interpretation theory of law
- b) Broad interpretation theory of law
- c) Legal positivist theory of law
- d) State centralist theory law
- e) All the above (a) – (d) are correct

1.5 _____ is the version of customary law that is found in written sources such as legislation, judicial precedent and textbooks.

- a) Official customary law
- b) Living customary law
- c) Academic customary law
- d) Both (b) and (c) are correct
- e) None of the above is correct

1.6 In terms of customary law, property is divided into:

- a) Family property
- b) House property
- c) Personal property
- d) All of the above (a)-(c) are correct
- e) None of the above is correct

1.7 Currently applies/apply to the control of property within a family home.

- a) Section 9 of the Constitution
- b) Section 6 of the Recognition of Customary Marriages Act 120 of 1998
- c) Section 7 of Divorce Act 70 of 1979
- d) Both (a) and (b) are correct
- e) Both (a) and (c) are correct

1.8 _____ of the Recognition of Customary Marriages Act 120 of 1998 seeks to protect the matrimonial interests of the spouses in a polygynous customary marriage by requiring the husband to draw up a contract stipulating how the estate is to be divided among the spouses in future.

- a) Section 3(1)(a)
- b) Section 7(4)
- c) Section 7(6)
- d) Section 3(1)(b)
- e) Section 8(1)

1.9 _____ 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

1.10 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*

SUB-TOTAL: SECTION A

[10]

SECTION B – LEGAL CONCEPTS AND SHORT QUESTIONS

QUESTION 1

Write down the legal concept that is represented by each of the following statements. For example; indirect rule or capitalism.

- 1.1 The philosophy or ethic that teaches about or seeks to promote the interconnectedness of humanity. (1)
- 1.2 The owner of livestock or fowls places them in the care and control of another for an indefinite period for use and enjoyment by that person. (1)
- 1.3 The claim that a person has under customary law against the biological father for raising his child. (1)
- 1.4 Sexual intercourse with a virgin entitling both the guardian and the victim to claim damages under customary law. (1)
- 1.5 The process of selecting the most appropriate rule to resolve a dispute between two competing legal systems. (1)

[5]

QUESTION 2

Write a short note on mafisa/sisa/farming out contract.

(6)

SUB-TOTAL: SECTION B

[11]

SECTION C – LONG QUESTIONS

QUESTION 1

T, who lives in Limpopo, and is already married to W in terms of Tsonga custom, decides to marry another woman L, unbeknown to W. The customary law of the place where T and the two women come from requires that the current wife give consent to any subsequent marriage her husband intends entering into. Answer the following questions. Please refer to relevant case law and statutory law.

1.1 Is the marriage between T and L valid? Explain.

(8)

1.2 Assuming that W relied on section 7 (6) of the Recognition of Customary Marriages Act 120 of 1998 to challenge the validity of the marriage between T and L, do you think she would succeed? Explain.

(7)

[15]

QUESTION 2

2.1 S, a deceased traditional leader had four wives and 15 children, males and females, with the eldest among them being a female. In terms of the customs and traditions of his place, only the eldest son of the main wife (Indlunkulu) is supposed to succeed him. If you were to be asked to advise the relevant Royal Council on this matter, what would you say? Advise them citing relevant authority.

(10)

2.2 Why is “succession”, as a concept, more important in this context, than “inheritance” is?

(7)

2.3 Enumerate the requirements that a person has to fulfil in order to be identified, appointed and recognised as a traditional leader in terms of the Traditional Leadership Governance Framework Act 41 of 2003.

(7)

[24]

SUB-TOTAL: SECTION C

[50]

GRAND TOTAL:

[60]