



**PROGRAM** : LLB  
**SUBJECT** : INDIGENOUS LAW  
**CODE** : IDL214B0  
**DATE** : JULY 2021 SUPPLEMENTARY EXAMINATION  
**DURATION** : 2 HOURS  
**WEIGHT** : 50 : 50  
**TOTAL MARKS** : 60

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**EXAMINERS** : MR SS NKOSI

**MODERATOR** : PROFESSOR M WATNEY

**NUMBER OF PAGES** : 6 PAGES

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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 Mkhize, LM; 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.
  - 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 10 June 2020 to Mr S Nkosi via at the following email address: [snkosi@uj.ac.za](mailto:snkosi@uj.ac.za)
  - 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 students 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".**
6. Good luck with the test.

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## MODULE CODE: IDL214B0

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### 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.
- c) Law of Evidence Amendment Act 45 of 1988.
- d) Traditional Leadership and Governance Framework Act 41 of 2003.
- e) 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 equality in status and control of property between customary-law spouses, 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 the estates of deceased black South Africans would continue to be administered by magistrates; and those of white people, by the Master of the High Court.
- e) Both (a) and (b) are correct.

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**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** A branch of law that regulates the selection of the most appropriate rule/s to resolve a dispute between two competing legal systems.

[5]

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## **QUESTION 2**

**Write a note on the following concepts:**

a) The difference between state-law/narrow legal pluralism and broad legal pluralism (6)

b) Mafisa/sisa/farming out contract. (9)

[15]

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**SUB-TOTAL: SECTION B**

**[20]**

## **SECTION C – LONG QUESTIONS**

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### **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 questions immediately below. Please refer to relevant case law and statutory law.

1.1 Is the marriage between T and L valid? Discuss with particular reference to case law. (10)

1.2 Assuming that W relied on section 7 (6) of the Recognition of Customary Marriages Act 120 of 1998, as an alternative, to challenge the validity of the marriage between T and L, do you think she would succeed? Explain. (5)

[15]

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## QUESTION 2

2.1 With reference to *Shilubana v Nwamitwa* 2008 (9) BCLR 914 (CC) state how courts should go about ascertaining and applying living customary law today.

(8)

2.2 W, an indigent customary-law wife of H, who is unemployed and has no income, would like to institute divorce proceedings. What advice would you give her? What prayer or relief would you be asking from the court?

(7)

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[15]

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**SUB-TOTAL: SECTION C** [30]

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**GRAND TOTAL:** [60]