

UNIVERSITY OF FORT HARE

AFRICAN CUSTOMARY LAW

LAC 213 E

DEGREE EXAMINATIONS

JUNE 2023

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Time: 3 HOURS

Subject: LAC 213 E

Marks: 100

This paper consists of 6 pages including the cover page

Internal Examiners

Ms V Gobeni

Mr A Phela

INSTRUCTIONS

ANSWER ALL QUESTIONS

Where relevant, your answer should be fully motivated and the relevant authority must be cited in support of your arguments.

Section A

Question 1

True or False

- 1.1 Ukutheleka is a customary law method used by a wife's maiden relatives to protect her against her abusive husband.

- 1.2 Ukungenwa is the practice where after the death of the wife, a younger sister or half-sister of the wife marries the husband and bears children on her sister's behalf

- 1.3 Muslim marriages are fully recognized in South Africa.

- 1.4 *Ramuhovhi and Others v President of the Republic of South Africa and Others* (CCT194/16) [2017] ZACC 41 dealt with the abolishment of Male primogeniture.

- 1.5 In terms of Customary Law the family head usually concludes contracts on behalf of, and in the interests of, his family

(10)

Question 2

- 2.1 List the sources of African Customary Law (5)

- 2.2 Discuss the implications of section 1 of the Law of Evidence Amendment Act 45 of 1988 for the recognition of indigenous law in South Africa. (15)

[20]

Question 3

- 3.1 Explain the *nqoma (sisa/mafisa)* quasi-contractual arrangement and the objectives of such a contract (15)

[15]

Question 4

4.1 In 2002, Vuyo (a male aged 22) and Karabo (a female aged 17) and their respective fathers concluded an agreement in terms of which Vuyo had to deliver five head of cattle and R 10 000 as lobolo to Karabo's family. Vuyo delivered part of the lobolo agreed upon and shortly thereafter, Karabo was allowed to reside with Vuyo and his family. Their marriage was never registered.

a) Did a legally valid marriage come into being between Vuyo and Karabo? (10)

b) If we assume that a valid marriage did come into being between Vuyo and Karabo: what are the general consequences for them as husband and wife in terms of customary law (5)

4.2) Discuss the court's interpretation of section 7(6) of the Recognition of Customary Marriages Act 120 of 1998 for polygynous marriages (15)

[30]

Question 5

5.1 Comment critically on the indigenous law of succession with reference to arguments presented in *Bhe And Others V Magistrate, Khayelitsha And Others (Commission For Gender Equality As Amicus Curiae)*; *Shibi V Sithole And Others*; *South African Human Rights Commission And Another V The President Of The Republic Of South Africa And Another 2005 (1) SA 580 (C)* (and any other case law) on the Law of Succession. (15)

[15]

Question 6

6.1 With reference to the Right to bury, write a case note on *Sokani v Sokani [2008] JOL 22085 (CK)* (10)

[10]

[Total for this paper: 100 marks]

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