



ZIMBABWE EZEKIEL GUTI UNIVERSITY

CUSROMARY LAW LB105 EXAMINATION JUNE 2017

THREE HOURS

INSTRUCTIONS

Answer **all** questions in section A and select **any two** questions from section B

Only authorized material is allowed in the exam

Section A : Answer all questions in this section

Question 1

Discuss the difference between custom and customary law as sources of law [10 MARKS]

Question 2

Discuss the significance of indirect rule in relation to the development of customary law in Zimbabwe. [5 MARKS]

Question 3

Explain the concept of primogeniture. To what extent do the inheritance laws in Zimbabwe recognise this concept? [10 MARKS]

Question 4

With the aid of case law, discuss the characteristics or elements of living customary law

[15 MARKS]

How can living customary be proved in a court of law and what challenges are normally faced in proving living customary law [10MARKS]

Section B

Select any two questions from this section

Question 5

Mhazi and Ropafadzo have been staying together since 1997 until 20 June 2017 when Mhazi passed on. During this 20 year period Mhazi had not finished paying lobola to his in laws . He had only managed to pay *tsvakirai kuno* to Ropafadzo's parents . Two children were born out of the relationship, Fungai a who is now 16 years old and Helborn who is aged 15 . During the duration of their relationship the parties worked together in acquiring the following property:

- a) An 8 roomed house asbestos house in Murambinda growth point and thatched huts in Murambinda rural.
- b) Heard of cattle and 20 goats

Mhazi is survived by Ropafadzo and two children. After burial the family gathered together and Mhazi's eldest brother Mhanduwe informed all the relatives that the estate of Mhazi will be administered according to the customs of Mhazi clan. He stated that in their clan, the eldest brother becomes the heir and inherits all the deceased's movable and immovable property. Mhanduwe gives an ultimatum to Ropafadzo that if she wants to continue staying at the Murambinda growth point house and the rural homestead, she should accept to be

Mhanduwe spouse and become his third wife. He also asserted that since Helborn and Fungai are still minors he is entitled to claim their guardianship and custody under customary law

Ropafadzo comes to you for legal advice. Can you advise Ropafadzo on the following:

- a) The position of the law as regards the administration of Mhazi's estate
- b) Her entitlement to inherit part of Mhazi's estate
- c) Also advise Ropafadzo on the steps that she can take to ensure the administration of Mhazi's estate through the formal courts.

[25 MARKS]

Question 6

To what extent is customary law compatible with the concept of human rights? Using examples of at least two cultural practices, discuss this statement. [25 MARKS]

Question 7

"Deep or strong legal pluralism recognizes the multiple normative orders that coexist with the law. Deep pluralism has also been described as the semi-autonomous fields." Identify one cultural practice from your culture that specifically illustrates the concept of deep/ strong legal pluralism. [25 MARKS]

Question 8

In the *Mautsa vs Kurebgaseka* HH 106-17 Chitakunye J held that the court is vested with the discretion to determine whether or not the justice of the case demands that general law or customary law should apply. With the aid of case law discuss the considerations that the courts take into account in determining whether customary law or general law should apply in the adjudication of cases [25 MARKS]