



ZIMBABWE EZEKIEL GUTI UNIVERSITY
CUSTOMARY LAW LLB105
SUPPLEMENTARY EXAMINATION JANUARY 2019

THREE HOURS

INSTRUCTIONS

Answer any **two** questions from Section A

Answer **all** questions from section B

Each question carries a total of **25 marks**

Only the constitution of Zimbabwe and other unannotated statutes are permitted in the examination

Section A

Answer any two questions from this section

Question 1

“The dominant lawyer’s view has been that the colonial successor states in Africa inherited plural legal system made up, basically, of the law of the colonizing power which had been imported and imposed, and various bodies of “customary law” or local law, which had “survived” through the colonial period. The idea that the customary law had “survived” need some scrutiny” Channock M, Making Customary Law: Men, Women and Courts in colonial Northern Rhodesia page 16

Discuss the relevance of this assertion in light of the development of customary law in Zimbabwe [25 marks]

Question 2

Customary law has always been labelled as contrary to human rights. Is this a correct assessment of customary law? [25 marks]

Question 3

“Any form of legal pluralism will lead to situations in which individuals find themselves subject to overlapping (and potentially contradictory) obligations emanating from different systems of law. Through application of choice of law rules, derived from statute or judicial precedent, the courts may then determine the most appropriate law to apply to the fact of particular cases”

With the aid of case discuss the above assertion and how court deal with conflict of laws. [25 marks]

Question 4

“The evaluation of whether or not customary justice is broadly disadvantageous is not a black and white issue.” Discuss [25 marks]

Section B

Answer all questions in this section

Question 5

Rudo is a 15-year-old lady who leaves in Chipadze village in Bindura with her maternal uncle. Her parents passed on when she was 12 years old. She never got an opportunity to go to school and as a result would spent most of the time performing household tasks. She fell in love with one of the villagers called Rungano. She became pregnant in the process of their courtship. Since he also came from a poor family, Rungano could not take Rudo to stay with his family. Rudo

continued to stay with her grandfather. She gave birth to a baby boy. Her uncle was very angry as a result of this incident and felt burdened by taking care of Rudo and her minor child. He made an arrangement with Mr Muchacha one of the wealthy men in the village to take Rudo as the 4th wife. Her uncle's argument was that Rudo will not have any chances of getting married to a young man since she is not educated and is now a single mother. Rudo refuses to go and stay with Mr Muchacha. Mr Muchacha reports the matter to the local headman. He demanded that either Rudo would either come to his house to be the 4th wife or the grandfather would refund all the bride price he had been paid. When he appeared before the headman, the grandfather made an undertaking to personally deliver Rudo to Mr Muchacha's house. The headman endorsed this agreement and implored the grandfather to do everything necessary to ensure that Mr Muchacha gets his wife since he had performed part of his bargain. Meanwhile Rungano wants custody of the son they had with Rudo. He argues that it is taboo in their culture to let another men who is not related to him take care of his son. He now wants custody and guardianship of the child.

- a) Advise Rudo on the position of the law pertaining to the guardianship and custody of minors under customary law. [15 marks]
- b) Discuss the legality of the decision taken by the headman and the grandfather [10 marks]

Question 6

Ndakaitei and Nhamo have been married under an unregistered customary law for a period of twenty years. The couple has been blessed with two girls who are now above the age of 18 years. They have a built a rural home in Seke village. They have 40 heard of cattle. Ndakaitei also runs a chicken project which is doing well. Nhamo decided to take another wife whom he thought would give birth to a son. Nhamo is worried that if he passes on he will not have any child to take his name since his daughters would be married. Ndakaitei is not happy about the decision and decides to leave Nhamo. Ndakaitei wants to know her property entitlements upon their separation. She wants to know if she can get a half share of the home and cattle under customary law.

- a) Advise Ndakaitei of her property entitlements under customary law. [13marks]
- b) Assuming that Nhamo would have passed on would her property entitlement differ from the one she has upon separation [12]