



ZIMBABWE EZEKIEL GUTI UNIVERSITY

Department of Public Law

Customary law (LLB105)

4 DECEMBER 2018

Instructions

- (i) Answer two questions from section A. Each question carries 25 marks. Answer all questions from section B. Each question carries 25 marks.
- (ii) Students may bring into the exam un-annotated and clean texts of applicable legislation and the 2013 Zimbabwean Constitution.
- (iii) Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
- (iv) Number your answers accordingly

Section A

Question 1

Discuss the concept of land ownership under customary law, and how such concept is influenced by discriminatory patriarchal principles of African culture. [25 marks]

Question 2

“Customary law has been distorted in a manner that emphasises its patriarchal features and minimises its communitarian ones.” Is this a correct assertion of customary law? [25 marks]

Question 3

- a) Discuss the concept of accessory liability under customary law [10 marks]
- b) Discuss the assertion that customary law is an unspecialized legal system. [15 marks]

Question 4

The contestation between principles of cultural relativism and universalism of human rights is strongly felt in the area of customary law. Discuss, giving examples of legislation and applicable customary law principles and rules. [25 marks]

Section B

Answer all questions in this section

Question 4

James is a 25 year old man who lives in Zvomunya village which is under the chieftainship of Chief Zvomunya in Bindura. James has been living in the area for the past 15 years when his maternal uncle took him in after his parents passed on. James was found one day working on the field on a prohibited day (*chisi*). When he was taken to the community court James indicated that he did not commit any offence since he is originally from Malawi and in the Malawi culture *chisi* falls on Monday and not Saturday as claimed in the Zvomunya village. James also refused to consent to the jurisdiction of Zvomunya community court and claims that Bindura Magistrate court should deal with the matter since he does not believe in the customary practices of Zvomunya area. James approaches you for advice.

- (i) Draft a legal opinion on the position of customary law pertaining to James’s problem. [15 marks]
- (ii) Discuss the issue of jurisdiction in this matter from a customary law perspective. (10 marks)

Question 5

Fari is a thirty-year-old widow who resides in Hwumanikwa Village in Kadoma. She is the first born child in a family of seven. The second and third born are males and the rest of her siblings are females. Fari's father is the chief in Marowa community in Mt Darwin. He is of old age and being aware of the fact that his days are numbered he called a meeting. At the meeting he appointed Fari as the successor to the throne. Fari accepts the appointment. A few days after the meeting, Fari's father passes on. Fari immediately moves back to the village to take over the throne. She is chased away by her brothers with the help of the village elders. They argued that it is a taboo for a woman to assume chieftainship position particularly whilst there are male sons. However, some of the elders felt that they need to fulfil the wishes of the late chief. As a compromise, it was agreed that since it was taboo for a woman to become a chief in the area, a cleansing ceremony was required so that the ancestors would accept Fari as the leader. Part of the ceremony involved a process where Fari will have sexual relations with the traditional healer so that the spirit of the deceased will manifest on her. Fari does not want to participate in the ritual but still want to assume the throne. One of woman from the village advised Fari to approach Zimbabwe Ezekiel Guti University law clinic for help.

- (i) Discuss the legal principles applicable for purposes of enabling Fari to safeguard her right to inheritance. **(15 marks)**
- (ii) Identify and discuss the hurdles and problems Fari is likely to face from a customary law perspective in pursuing her interests **(10 marks)**