

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATION PAPER, JULY 2008**

**TITLE OF PAPER** : **SWAZI LAW AND CUSTOM**

**COURSE CODE** : **DL 012**

**TIME ALLOWED** : **TWO (2) HOURS**

**INSTRUCTIONS** :

1. **THERE ARE FIVE (5) QUESTIONS IN THIS PAPER. EACH QUESTION CARRIES 33 MARKS.**
2. **QUESTION ONE (1) IS COMPULSORY AND CARRIES 34 MARKS.**
3. **QUESTION ONE MUST BE ANSWERED IN ADDITION TO ANY OTHER TWO QUESTIONS.**
4. **THE TOTAL NUMBER OF QUESTIONS TO BE ANSWERED IS THREE (3)**

**TOTAL MARKS** : **100**

**THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.**

### **QUESTION ONE**

One of the most important bars on marriage is contained in Section 7 of the Marriage Act No. 47 of 1964. This section provides, amongst other things, that the subsistence of a prior marriage either according to Swazi Customary Law or by civil/Christian rites prohibits a marriage under the Act, with another person.

Critically discuss the above statement, citing relevant authorities where necessary.  
(34 marks)

### **QUESTION TWO**

Describe the constitution and jurisdiction of the Swazi courts. What law are the Swazi courts authorized to apply? State, if there are any, statutory basis for your answer.

(33 marks)

### **QUESTION THREE**

- 3.1 Define marriage under Swazi Law and Custom.  
(5 marks)
- 3.2 Give two degrees of relationships under which people may not marry. (5 marks)
- 3.3 A case begins at the chief's court. What other courts must it go through before it reaches the High Court? (5 marks)
- 3.4 What is the order of succession in the following instances:
  - 3.4.1 The deceased died leaving two wives, the first one having married her by civil rites and the second one by Swazi Law and Custom. Both wives have two children each. (5 marks)
    - 3.4.2.1 The deceased died leaving behind three wives. All wives were married by Swazi law and custom. (5 marks)
- 3.5 What do you understand by the phrase "repugnancy clause?" What is its statutory basis in Swaziland? (8 marks)

#### **QUESTION 4**

One of the distinct characteristics of customary law is that it is not easily ascertainable. Some scholars have, as a result, advocated for its codification. Do you think this move could work to the advantage of our customary law? What are the advantages and disadvantages of codifying customary law?

(33 marks)

#### **QUESTION 5**

(a) What is a will? (7marks)

(b) What is the difference between an ordinary will and a privileged will?

(7 marks)

(c) Give three instances in which a codicil may be valid even though executed without witnesses. (7 marks)

(d) What is your understanding of the phrase “intestate succession”, and what are the two main sources of the law of intestate succession in Swaziland? (7 marks)

(e) Give three instances or ways in which a will can be validly altered (5 marks)