

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2009

TITLE OF PAPER: THE PRINCIPLES OF SWAZI LAW & CUSTOM

COURSE CODE: L104

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

- (1) ANSWER QUESTION ONE (1) WHICH IS COMPULSORY AND ANY OTHER THREE (3) QUESTIONS OF YOUR CHOICE**
- (2) MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS**

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1.

The government of Swaziland has recently been granted funding by the European Union to engage in the exercise of codifying Swazi Law and Custom. The donor has emphasized that before engaging in the exercise it is imperative that experts and indigenous Swazis be consulted to justify the need for such exercise as well as to gather as much data as possible. The consultation process has already started and is at an advanced stage. In your own knowledge and analysis of this exercise do you consider the codification of Swazi Law and Custom viable and worth the effort?

If so, what will be its advantages and benefit to the Swazi people. Should you think otherwise make sure that you substantiate your stand point as well.

[25 Marks]

QUESTION 2

Ngulube and Lindelwa married by civil rites in community of property in year 2000. In the course of 2004 the couple developed significant marital differences to the point that they both left the matrimonial apartment they were occupying at Mobeni flats in Matsapha with each one of them returning to reside at their respective parental homes. In 2006 Ngulube started dating Nomfundo who was occasionally visiting Ngulube at his parental homestead and sometimes sleeping in accordance with Swazi Law and Custom.

During one of Nomfundo's sleep-overs, one morning Ngulube's family members woke her up and called her to the cattle-byre where she was eventually smeared with red ochre. Though taken by surprise she was eventually very elated by this turn out of events particularly because she loved Ngulube so dearly. Lindelwa learnt of this and kept her comments to herself.

A few months later Ngulube paid lobola to Nomfundo's family. During the festive holidays of 2008, Ngulube travelled to Johannesburg and he died in a road accident on

his way back and now a legal battle has ensued between the two women, each claiming to be legally married to Ngulube and thus entitled to inherit his entire estate.

Dissect the problem and provide your legal opinion.

[25 MARKS]

QUESTION 3

In the context of testamentary succession under the common law, there is a phrase known as “freedom of testation”. What does this phrase entail?.

In light of recent constitutional development in Swaziland, does this doctrine still obtain in our law? Your answer must be supported by relevant legal authority.

[25 MARKS]

QUESTION 4

Discuss the meaning, significance and effect of Section 252 of the Constitution of Swaziland Act No- 1 of 2005

[25 MARKS]

QUESTION 5

The process through which one may acquire proprietary rights to land and how he/ she may then deal with it under Swazi law and Custom differs completely from the process used under title deed land. Moreover, not everyone may acquire and deal with property (land) under Swazi law and custom. Discuss.

[25 MARKS]

QUESTION 6

(a) What is the effect of a marriage without an antenuptial contract? (10)

(b) What is the meaning and effect of the marital power of the husband (10)

(c) In terms of the Wills Act of 1955 what are the five (5) major formalities for the execution of a valid will? (5)

TOTAL: [25 MARKS]