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UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, 2013.

TITLE OF PAPER: SWAZI LAW AND CUSTOM

COURSE CODE : DL012

TIME ALLOWED: 2 HOURS

INSTRUCTIONS:

1. THERE ARE FIVE QUESTIONS IN THIS PAPER AND THREE QUESTIONS MUST BE ANSWERED.
2. QUESTION ONE IS COMPULSORY AND CARRIES 34 MARKS.

TOTAL MARKS: 100

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

QUESTION 1

Nonduduzo Nhlabatsi got married to Simo Sukati through the dual marriage regime and they had three children. In 1986, the marriage relationship became sour and Nonduduzo instituted divorce proceedings at the Manzini Magistrate Court where a final decree of divorce was issued.

Two years later, Nonduduzo got married to Sam Mdluli by Swazi law and custom. Their marriage was punctuated by intervals of violence emanating from Mdluli's alcoholism habit. Nonduduzo left Mdluli and went to live in a company house in town with her children from the previous marriage. Mdluli never bothered them again.

Three years later, Nonduduzo and Simo reconciled during a wedding ceremony of their first daughter. Simo convinced Nonduduzo that their marriage by Swazi Law and Custom was still intact and the court had only dissolved their civil rites marriage.

On hearing about their reconciliation, Mdluli instituted legal proceedings against Sukati alleging that Mdluli was committing adultery with his wife.

What are his chances of success? Discuss.

(34 marks)

Question 2

Swazi law and Custom has been a subject of debate amongst scholars. They have argued that the law should be codified whilst others are against the idea of codifying the law. What is your view?

(33 marks)

Question 3

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Simanga Dlamini's father, Ben Dlamini exercised his right to execute a will during his lifetime. He was married to Simanga's mother by civil rights in community of property. He had purchased a farm in the Shiselweni region and also owned various properties in the two big cities in the country. He also owned a fleet of cars and shares in some companies.

At the reading of the will at the Master's Offices in Mbabane, it transpired that the old man had bequeathed all his property and shares to his mistress with whom he had a minor child and had been his secretary for more than 10 years.

In desperation, Simanga's mother turns to his son who has studied law at the University of Swaziland for advice. Simanga is also shaken by his father's will and turns to you for assistance.

Advise on the extent of validity of this will and the course of action available to Simanga's mother.

(33 marks)

Question 4

Describe how Swazi Courts are constituted in the country, what law are they empowered to apply and their jurisdiction.

(33 marks)

Question 5

Discuss how Swaziland ended up inheriting the Roman Dutch Common Law, despite being colonised by the British.

(33 marks)