

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION, JULY 2014

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

**COURSE CODE** : **L 104**

**TIME ALLOWED** : **THREE (3) HOURS**

**INSTRUCTIONS** : **ANSWER ANY FOUR (4) QUESTIONS**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GIVEN BY THE  
INVIGILATOR.**

### **QUESTION 1**

Msibi got injured when he was gored by Simelane's bull which had escaped from its paddock. There was a hole in the fence of the paddock which Simelane had been putting off mending. 92

Msibi is desirous of suing Simelane for his personal injuries his big question however is in which court would he be better served – the Roman-Dutch Law courts or the customary law courts.

Advise him.

[25 MARKS]

### **QUESTION 2**

Nokwanda a seventeen (17) year old Form V pupil of Swazi National School went missing from home and school for two weeks. Having lodged a missing person report with the police her parents further hired the services of a private investigator. The Private Investigator traced Nokwanda to Masemola's (a forty (40) year old bricklayer's) homestead. The Private Investigator discovered that Nokwanda had been wed traditionally (tekaed) by Masemola without Nokwanda's consent and/or that of her parents. The customary piece of meat signifying that a woman had been tekaed was not delivered at Nokwanda's parents homestead, as custom dictates. The reason advanced by Masemola for this is that "they were scared that doing so would have set her parents upon them".

Nokwanda's parents have taken her back home and have taken her out of the country so that she continues her schooling uninterrupted.

Masemola is very aggrieved at this action by Nokwanda's parents, saying they have deprived him of his wife, he is considering suing them. Making reference to customary law, the constitution and human rights what are his chances of success?

[25 MARKS]

### **QUESTION 3**

Zwane and Lulu underwent a customary law marriage ceremony in December 2013. They stay in their own house which is located within the compound of Zwane's parents homestead. Lulu has consistently refused to perform the duties expected of a makoti (daughter-in-law) such as:

- (a) Cooking for the in-laws
- (b) Sweeping the family compound
- (c) Collecting water for domestic use from the river
- (d) Collecting the wood for cooking for the whole family

- (e) Washing the clothes of her in-laws and;
- (f) Performing any other duties assigned by the in-laws.

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Her reason is that there have been significant social changes such that the values embraced by modern societies such as human rights and the constitution mean that no one can make her/force her to do what she does not wish to do.

Zwane is considering divorcing Lulu. Advise him.

[25 MARKS]

#### **QUESTION 4**

You have been invited by the Law Reform Commission to make submissions on law reform proposals on the customary law of succession as it affects surviving female spouses.

[25 MARKS]

#### **QUESTION 5**

By its very nature customary law can never co-exist with the rule of law and modern tenets of human rights.

Discuss.

[25 MARKS]