

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

**FINAL EXAMINATION PAPER, DECEMBER 2016**

- TITLE OF PAPER** : **THE GENERAL PRINCIPLES OF SWAZI  
LAW AND CUSTOM**
- COURSE CODE** : **LAW105**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
1. **ANSWER ANY FOUR (4) QUESTIONS.**
  2. **MARKS ARE INDICATED AT THE  
END OF EACH QUESTION.**
  3. **CANDIDATES ARE THEREFORE  
ADVISED TO ALLOCATE THEIR  
TIME ACCORDINGLY.**

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

### **QUESTION ONE**

Simelane the Chief of Kalomshiyo has taken fancy to Mkhwanazi's daughter Zandile, a sixteen year old attending Form 3 at Mswati II High School. She is a bright girl who has been doing extremely well in her studies, to the delight of her teachers and her parents, who all see a very bright future for her academically.

Zandile's father Mkhwanazi is a commercial farmer in the area. His livestock including cattle, goats, sheep and pigs was decimated by the drought the country has been experiencing. His maize fields lie fallow for the same reason. Mkhwanazi is totally ruined by the draught and is at his wits end, he can hardly support his family.

Simelane the Chief tells Mkhwanazi that if he could give him his daughter Zandile under the *Kwendzisa* custom he would pay out 15 lobola cows at once and over and above he would give as a present to Mkhwanazi a brand new tractor and further give Mkhwanazi a soft loan (without interest of E200000) payable over ten years.

Mkhwanazi is really excited by the Chief's offer rushes home and tells his wife all about it saying "our problems are over". LaSithole's Zandile's mother is vehemently against the whole matter. However, her husband tells her that as a woman she has no say over the matter, she should just go ahead and make preparations to hand over Zandile to the Chief.

LaSithole tells Mkhwanazi that "she will seek justice for her little angel even if it means going on her hands and knees, no child of hers would undergo such a nefarious evil, demeaning, cruel and repugnant custom".

She has come to you for advice.

(25 marks)

### **QUESTION TWO**

Sukati had a quarrel with Gamedze over a boundary fence belonging to him which he alleges was destroyed by Gamedze's livestock. Sukati has tried to get Gamedze to pay for the fence but Gamedze has repeatedly refused to do so.

Sukati is pondering whether he should take this matter up with the Swazi Courts or the western law courts.

How would you advise him?

(25 marks)

### **QUESTION THREE**

LaMnguni's husband passed away two months ago. The customary practice is that a widow wears special black mourning gowns for a certain period after the death of her

husband. LaMnguni, however refused to wear the mourning gowns, on the basis of her religion. In her religion a widow does not or is not required to wear mourning gowns. In her religion a widow does not or is of required to wear any distinctive mourning attire. Shongwe the Chief of her area has summoned her to the Umphakatsi with a view to evicting her from the area, since according to the Chief, "She is bringing bad luck and the fury of the ancestors to the area by refusing to undergo an old established custom which has been practised from time immemorial".

Advise LaMnguni.

(25 marks)

#### **QUESTION FOUR**

What are the characteristic features that distinguish Customary Law from the received Roman-Dutch Common Law?

(25 marks)

#### **QUESTION FIVE**

Discuss four (4) Customary law practices which are in conflict with the constitution.

(25 marks)