

**UNIVERSITY OF ESWATINI**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**MAIN EXAMINATION PAPER MAY 2019**

**TITLE OF PAPER** : **SWAZI LAW AND CUSTOM**  
**COURSE CODE** : **LAW106 (IDE- LLB & Dip law)**  
**TIME ALLOWED** : **THREE (3) HOURS**  
**INSTRUCTIONS** : **1. ANSWER ANY FOUR (4) QUESTIONS**  
**2. ALL QUESTIONS CARRY EQUAL MARKS**

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

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**QUESTION ONE**

In 2010 Dlamini married LaMaziya in terms of Swazi Law and Custom and they established a marital home in Manzini. However, the marriage went sour after a few years and in 2015 LaMaziya packed her bags and went back to her parental home in Mkhuzweni. That very same year Dlamini married LaSimelane under civil rites and lives with her in the same home he built with LaMaziya.

In 2000 Dlamini passed away and LaMaziya went back to her marital home and insisting she is still Dlamini's wife and that wanted to come back to her rightful home. LaSimelane refuses to budge claiming her civil rites marriage to Dlamini was superior hence the only legally recognised marriage. She further contends that, in any case, LaMaziya's marriage to Dlamini ended when she left her marital home.

Using decided cases and applicable legislation, advise LaMaziya of the legal recourse, if any, available to her. [25 Marks]

**QUESTION TWO**

The Marriage Bill of 2017, once passed, seeks to address some of the weaknesses, injustices and gaps that can be seen in the Marriage Act 7 of 1947. Discuss. [25 Marks]

**QUESTION THREE**

A will is the surest way one can ensure that their wishes are fulfilled upon their passing on, in so far as the devolution of one's estate is concerned. However more often than not, especially where big estates are concerned, dispute abound upon the death of the testator. The courts are usually faced with the onerous task of interpreting and ensuring that the testator's wishes are given effect to. How can this be best achieved by the courts?

[25 Marks]

#### **QUESTION FOUR**

Mlokotfo Nxumalo is a staunch traditionalist, and a Chief in one of the Shiselweni chiefdoms. He is married to five wives under customary law, respectively; LaNkhosi, LaSimelane, LaNdlovu, LaSiwela and the youngest LaMaziya. All have 5 children each including sons except for La Siwela who only has 5 daughters. In 2008 LaNkhosi passed on followed by LaSimelane in 2013, leaving behind the three younger wives. In 2015 Mlokotfo passed on as well after a short illness, leaving behind the three remaining wives and 27 children in total. 25 of these children were those born from each of the 5 wives married to Mlokotfo, and the two additional children, a son and a daughter were born from a previous relationship he had before his first marriage. He never married this woman and she subsequently went on to marry another man. The son, named Mgcabho, is the Chief's eldest child and the daughter is named Kholiwe.

You have been approached by the three executrix (the surviving wives) of Mlokotfo's estate. Taking into account all the relevant facts above, decided cases, applicable statutes and relevant legal authority.

Advise them of the legal position that would obtain in the devolution of their late husband's estate in light of the Supreme Court Judgment in the case of **The Attorney General vs The Master of the High Court Civil Appeal Case No.55/2014**.

[25 Marks]

#### **QUESTION FIVE**

The nature of land ownership rights in Swaziland has seen drastic changes in recent times. Using applicable law and decided cases, critically discuss this statement. [25 Marks]