



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW105

TITLE OF PAPER: PRINCIPLES OF SWAZI LAW & CUSTOM I

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of Section (A) and (B).
2. Section A is compulsory.
3. Answer any three questions from Section B.

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

SECTION (A)

Question 1 (this question is compulsory)

There is a practice, it has been reported, in terms of which emaSwati (Swazis) conduct a purported marriage after the death of a partner (a so-called posthumous ceremony). It seems that such purported marriages are solemnised in term of Swazi tradition and custom.

During the month of October 2019, the Principal Secretary in the Ministry of Home Affairs issued some advise against this practice: whether carried out in terms of a Swazi law and custom marriage or a civil rites marriage. He further made it known that his Ministry, which is responsible for the registration of Deaths, Marriages and deaths, would not register or issue marriage certificates of any marriages conducted after the death of one of the parties.

Acting Governor of the traditional Ludzidzini institution, Lusendvo Fakudze, is reported to have weighed in on the matter in a manner dismissive of the Principal Secretary's advise, claiming that the traditional marriage ('kuteka'), posthumously, was permissible and, therefore, lawful.

Considering the fact that Swazi law and custom is a recognized source of law to be applied in the resolution of disputes, discuss whether the practice can be accorded legal status (or the status of a legal rule), allowing for a marriage certificate to be obtained. Give your reasons.

[25 marks]

SECTION (B)

Question 2

Swazi law and custom is unwritten and uncodified source of law. That fact stands out as its shortcoming when it is compared to the other sources of law: the Roman-Dutch law and statute. It is argued that codification would significantly enhance its status as a source of law.

(a) What do you understand it to mean that Swazi law and custom is an uncodified source of law?

[5 marks]

(b) Discuss what the disadvantages of its being uncodified are?

[10 marks]

(c) What advantages would a codification process bring, to enhance it?

[10 marks]

[Total marks: 25]

Question 3

Discuss the repugnancy clause in relation to customary law, locating it within the Constitution and the Swazi Court Act of 1951. In the discussion, indicate whether you consider it a good tool or not in how it relates with Swazi law and custom. Motivate your thoughts.

[25 marks]

Question 4

The Kingdom of Eswatini, like most post-colonial African countries, has a dual legal system, as well as a dual court system.

Discuss what it means that Eswatini has a dual legal system and a dual court system. In your discussion indicate how these respective systems operate.

[25 marks]