INSTRUCTIONS

1. Students are requested in their own interests, to write legibly.

2. There are 3 Sections in this exam. Students must answer all questions.

3. Answer each section in a separate answer booklet.

4. This paper consists of SIX (6) page. Please ensure that you have them all.
QUESTION 1

Thembi married Nathi Dhlomo in 2011 according to customary law. Prior to the wedding Nathi agreed to hand over some of the lobolo to Thembi’s father. All the other customs relating to the wedding were complied with. One morning Nathi wakes up and realizes he is no longer in love with Thembi. Not only does she not show him or his family the respect he deserves (in his opinion) but she has “let herself go” in the sense that she does not take care of herself in terms of grooming and exercising. Nathi has met a model Thuli whom he has fallen in love with. He wants to marry Thuli. Thembi discovers that Nathi has been having an affair with Thuli for the last three months. She approaches you for legal advice in obtaining a divorce. However, according to Nathi, he states that he was never married to Thembi and that their customary marriage is “invalid on the basis that the bride (Thembi) was not formally handed over to Nathi (groom’s) family and therefore he is not legally married to her in terms of customary law.

Thembi approaches you for legal advice regarding the question of whether she in fact had a valid customary marriage at all. Advise Thembi with reference to relevant case law.

[Total Q1: 15 marks]
QUESTION 2

Khanya married Ruth in 2003 according to customary law. He wants to marry Nomasonto in November 2012 (also according to customary law). He approaches you for legal advice on drafting an ante-nuptial agreement to regulate his marriage with Nomasonto. He is not really sure how much she loves him as he has heard rumours in the community that she likes men who have lots of money.

(a) Advise Khanya on what the implications of drafting an ante-nuptial agreement will have on his existing marriage to Ruth.  

[Total Q2 (a): 3 marks]

(b) Assuming that Nomasonto agrees to sign the ante-nuptial agreement, can she insert a special clause preventing Khanya from entering further polygamous marriages? Explain.

[Total Q2 (a): 2 marks]

[TOTAL Q2: 5 MARKS]

QUESTION 3

Bongani is a tribal chief in the Kalawa Village in the Province of Limpopo. He died in August 2012 without a will. In 1974 he married his first wife, Lungiwe in terms of customary law. They had a daughter Lira. In 1987 Bongani married his second wife, Dothwa, also in terms of customary law. Dothwa is unable to have children. Bongani cannot accept the fact that he will not have any sons that can succeed him as heirs to the throne. For this reason he decides to have an extramarital affair with Yoliswa solely for the purpose of ensuring that Yoliswa provide his second wife’s house with a son who “will inherit the throne.” A son is born out of this affair: Thembani. He further tells his other wives he has no intention whatsoever of marrying Yoliswa.
Given the recent developments in customary law of succession and inheritance answer the following questions:

(a) Which legislation is relevant and should be applied by the court concerning the devolution of the chief’s estate in this matter? Substantiate your answer.  

[Total Q3 (a): 2 marks]

(b) Yoliswa brings an urgent application requesting the court to interdict his first wife Lungiwe, who is the executor of the estate from dividing the Chief’s estate pending the determination of all beneficiaries and heirs of the estate, and the position of chief in terms of customary law. Would Yoliswa and her son Thembani be legally entitled to inherit portions of the intestate estate under customary law? 

[Total Q3 (b): 2 marks]

(c) Bongani’s first wife, Lungiwe and their daughter Lira both die in the same car accident. Following their death, the surviving wife Dothwa married another woman Florence for the purpose of providing Dothwa’s house with heirs. A month ago Florence gives birth to a healthy girl, Janet. However, immediately after the birth of the twins (Janet and Thabo), Dothwa dies of old age. In her will, which is valid she stipulates:

“I leave all my property to my children and descendants in equal shares.”

Would Florence’s daughter Janet as well as Thabo be legally entitled to portions of Dothwa’s estate under customary law? Support your answer with reference to relevant case law. 

[Total Q3 (b): 6 marks]

[TOTAL Q3: 10 MARKS]

TOTAL SECTION A: 30 MARKS
SECTION B

Ms Bhamjee
(Please answer in a separate booklet)

QUESTION 4

Zahra is married to Ozayr in terms of Islamic law. She has been married to him for four years. She is pregnant with their first child. She found out that Ozayr was cheating on her, and now wants a divorce. She asks you advice on how she can get a divorce, as well as maintenance for herself, and their unborn child.

[Total Q4: 15 marks]

QUESTION 5

What are the requirements that need to be fulfilled for there to be a valid marriage in terms of Islamic law?

[Total Q5: 5 marks]

TOTAL SECTION B: 20 MARKS
SECTION C

Ms Soni

(Please answer in a separate booklet)

QUESTION 6

Ovi is 25 years old. When she turned 18, her parents arranged her marriage to Arjun. The marriage was performed according to traditional Hindu rites. Ovi later learns that throughout their marriage, Arjun has been involved in an extra-marital relationship with another woman – Purvi. Arjun has since told Ovi that he does not love her, and is living with Purvi.

Ovi approaches you and would like to know whether she can divorce Arjun. Advise her bearing in mind:

(a) The law relating to dissolution of Hindu marriages in India; and

(b) Her position in terms of South African law.

[Total Q6: 10 marks]

QUESTION 7

Although India is a political democracy, the hierarchical caste system is deeply rooted into Indian society. Write a note on the caste system. Your answer must include the following:

(a) A definition of the caste system.

(b) The classes into which Hindu society is divided in terms of this system.

(c) The status of relations between members of different castes.

[Total Q7: 10 marks]

TOTAL SECTION C: 20 MARKS

TOTAL FOR PAPER: 70 MARKS