INSTRUCTIONS

1. This paper consists of SEVEN (7) pages. Please make sure you have them all.

2. This paper consists of two sections. You must answer both sections. Please answer SECTION A on the MCQ answer sheet provided AND SECTION B in a separate answer booklet.

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

4. Students are required to return the question paper with the answer book.
SECTION A [30 Marks]

(Please answer this section on the MCQ answer sheet provided)

ANSWER ALL THE QUESTIONS FROM THIS SECTION

Choose the correct answer from the options provided in the following questions:

1. A customary marriage can be valid without the transfer of ilobolo from the prospective husband's family to the prospective wife's if:
   a) There is an agreement that ilobolo shall not be payable;
   b) The parties are contemplating a monogamous customary marriage;
   c) The parties are contemplating a polygamous customary marriage;
   d) None of the above is correct.

2. According to the Recognition of Customary Marriages Act, in order for customary marriage to be valid it must be negotiated. This means that:
   a) There must be a marriage proposal;
   b) There must be a delivery of ilobolo;
   c) There must be approved cohabitation;
   d) All of the above are correct.

3. The following are religiously approved Hindu marriages:
   a) The Brahma marriages and the Prajapatiya marriages;
   b) The Brahma marriages and Gandharva marriages;
   c) The Prajapatiya marriages and the Gandharva marriages;
   d) None of the above is correct.

4. In order for a marriage to be valid under Muslim law the following must be met:
   a) Conclusion of a marriage contract;
   b) Both parties must have capacity to marry each other;
   c) The marriage must be registered;
   d) All of the above are correct.
5. In terms of s 29(2) of the Constitution, everyone has a right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. This means that:
   a) This right only applies to basic education;
   b) This right only applies to public/state owned schools;
   c) This right applies to all schools within South Africa;
   d) None of the above is correct.

6. Family courts have jurisdiction to grant a decree of divorce concerning a customary marriage. Hence they will apply customary law where appropriate. Therefore they can determine the following:
   a) Existence and validity of a customary marriage;
   b) Award custody of children;
   c) The best interest of the child, using ancestral bondage criterion;
   d) All of the above are correct.

7. In recognizing the application of customary law, the Law of Evidence Amendment Act 45 of 1988 provides that:
   a) Courts may take judicial notice of indigenous law, in so far as such law can be ascertained readily with sufficient certainty.
   b) Courts may take judicial notice of indigenous law, in so far as such law is relevant to the dispute between the parties.
   c) Courts may take judicial notice of indigenous law, in so far as such law is not contrary to the Constitution and does not conflict with natural justice.
   d) All of the above are correct.

8. Jurisdiction may be conferred on a traditional leader to try and punish any African who has committed, in the area under the control of a traditional leader:
   a) Any offence arising in terms of common law;
   b) Any offence arising in terms of customary law;
   c) Any statutory offence prescribed by the Minister;
   d) All of the above are correct.
9. The Recognition of Customary Marriages Act protects women from being vulnerable to HIV in the following ways:
   a) A woman’s consent is needed to marry, and she should be above the age of 18 years to consent. This will help to protect girl children from being forced into marriages which may put them at risk of HIV;
   b) The equal status of women will mean that women will be able to own property in their own name and enter into contracts – this economic independence will help women to have the power to leave relationships that put them at risk of HIV infection;
   c) It protects women by giving them a choice to end the marriage (which could put them at risk of HIV infection);
   d) All of the above are correct.

10. Various customary practices have been alleged to be linked to HIV and AIDS transmission, for example:
    a) Male ritual circumcision and Virginity testing.
    b) Cohabitation without payment of ilobolo.
    c) Same sex cohabitation.
    d) All of the above are correct.

11. In the case of S v Vengetsamy 1972 (4) SA 351 (D) it was held that:
    a) Spouses married in a monogamous Hindu marriage are entitled to marital privileges, such as the right to testify against one another in criminal proceedings instituted against either party.
    b) Spouses married in a polygamous Hindu marriage are entitled to marital privileges, such as the right to testify against one another in criminal proceedings instituted against either party.
    c) Partners in a civil Hindu life partnership are entitled to marital privileges, such as the right to testify against one another in criminal proceedings instituted against either party.
    d) None of the above is correct.

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12. Traditional leaders may not impose punishment:
   a) Involving death;
   b) Involving mutilation;
   c) Involving imprisonment or impose a fine exceeding R 100;
   d) All of the above are correct.

13. The following leadership positions within the industry of traditional leadership are recognized:
   a) Kingship, Principal traditional leadership and Headmanship;
   b) Principal traditional leadership, and traditional healers;
   c) Headmanship, Queenship and Kingship;
   d) None of the above is correct

14. The following legislation has been promulgated to ensure that diversity and equity become a reality in the domestic environment:
   b) Amended Basic Conditions of Employment Act, No. 75 of 1997;
   c) Broad-Based Black Economic Empowerment Act, No. 53 of 2003;
   d) None of the above is correct.

15. The Repugnancy clause meant that:
   a) African customary law will only be recognised if it is not in conflict with natural justice;
   b) African customary law will only be recognised if it is codified;
   c) African customary law will only be recognised if it becomes uniform from village to village;
   d) All of the above are correct.
Question 1

Define the following terms.

1. Principle of primogeniture
2. Nuclear family
3. Regent
4. Repugnancy clause
5. Inquisitorial procedure

[Total Q1: 10 marks]

Question 2

The case of Shilubana and others v Nwamitwa 2009 (2) SA 66 (CC) is said to portray the essential role played by a traditional authority in the development of customary law and day-to-day administration of the areas and lives of traditional communities.

a) Outline the facts of the case.  

[Total Q2.(a): 2 marks]

b) Outline the findings of the court of first instance and the Supreme Court of Appeal. 

[Total Q2.(b): 5 marks]

c) Outline and discuss the reasons that were given by the Constitutional Court in overturning the decision of the Supreme Court of Appeal in this case. 

[Total Q2.(c): 5 marks]

d) Between the Supreme Court of Appeal and the Constitutional Court which one do you think was correct? Give reasons for your answer. 

[Total Q2.(d): 3 marks]  
[Total Q2: 15 marks]
Question 3

Sipho impregnated Thandiwe in June 1999 whereupon his father and uncle went to Thandiwe’s father to acknowledge the delict. Sipho’s uncles offered to pay six heads of cattle for seduction damages. Thandiwe gave birth to a baby boy in February 2000. Subsequently, both families agreed that Sipho and Thandiwe marry each other. A further agreement was reached on the amount of ilobolo to be transferred from Sipho’s family to Thandiwe’s family though none were transferred at the time. After these negotiations Sipho and Thandiwe lived together as husband and wife. Thandiwe gave birth to another child, Nozipho.

In 2003 Thandiwe heard that Sipho had married a woman by the name of Belina in 1990 according to customary rites and was not divorced from her. In a rage, Thandiwe left Sipho and went back home taking both children. Thandiwe has come to you for legal advice. She would like you to answer the following questions.

a) What are the requirements of a valid customary marriage according to the Recognition of Customary Marriages Act, 120 of 1998? List and explain the requirements, further clarify whether or not ilobolo is one of the requirements.

[Total Q3(a): 10 marks]

b) The Act prescribes a procedure that a man who wishes to marry a second wife must follow. Write a short note on the procedure.

[Total Q3(b): 3 marks]

c) What is the legal status of Thandiwe’s marriage to Sipho? Discuss.

[Total Q3(c): 2 marks]

[Total for Section B: 40 marks]

[TOTAL MARK FOR PAPER: 70]