



HERBERT CHITEPO LAW SCHOOL

BACHELOR OF LAWS HONOURS DEGREE

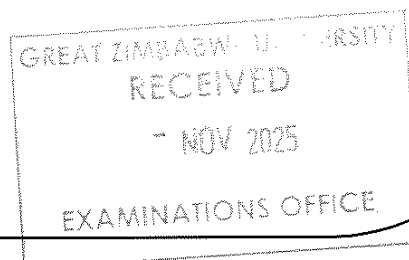
LEVEL 1 SEMESTER 2

EXAMINATION QUESTION PAPER

MODULE CODE: LLB 124
MODULE NARRATION: Customary Law
DATE: 2025
DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES:

1. Answer THREE questions in all. Question one is compulsory.
2. You are advised to read all questions carefully before attempting to answer any.
3. You are advised to cite relevant authorities to support your answers.
4. Write legibly.
5. This examination paper contains 5 pages including the cover page.



SECTION A

THIS QUESTION IS COMPULSORY

QUESTION 1

Madube is a 50 year old woman who resides in Gororo village which is located in Chivi. She has been married to Manhomo for 30 years and they have no children together. Madube believes that, her aunt Machuma is a witch and she is responsible for her life's misfortunes. She also believes that Machuma is responsible for her numerous miscarriages. One evening Madube decided to confront Machuma over her life issues. She went to Machuma's homestead and demanded that Machuma produces all the paraphernalia which she uses for witchcraft.

Machuma initially professed ignorance and she was assaulted by Madube. After the assault she produced a piece of white cloth, a horn and a clay pot, allegedly used for witchcraft activities. Madube further assaulted Machuma all over her body using mulberry tree switches. The following day, Machuma was taken to hospital where she was admitted and died after a week due to the injuries she sustained from the assault. This led to the arrest of Madube for the 'murder' of Machuma.

Write a legal opinion advising Madube on whether she can use her belief in witchcraft as a defence to the charge of murder and also how the Zimbabwean and South African criminal jurisprudence has dealt with this issue. **[30 Marks]**

SECTION B

ANSWER ANY TWO QUESTIONS FROM THIS SECTION.

QUESTION 2

After dating for 2 years, Chiedza and Njabulo decided to formalise their relationship by entering into a customary marriage. Njabulo approached Chiedza's family and paid the bride price. Out of the 20 cattle which were demanded by Chiedza's family Njabulo only managed to pay 5 cattle.

Subsequent to the customary rites, Chiedza and Njabulo registered their customary marriage on the 14th of February 2024. They received their marriage certificate on the 16th of February 2024, which clearly indicated that they had entered into a marriage under the Registered Customary Marriage Act Chapter 5:07. On the 20th of March 2024 Njabulo decided to divorce Chiedza for unknown reasons.

He approaches you for legal advice on the following issues;

- (a) Whether payment of lobola is a requirement for the validity of a registered customary marriage? **[15 marks]**
- (b) Whether his marriage certificate is valid? **[5 marks]**

[Total: 20 marks]

Question 3

Section 176 of the Constitution of Zimbabwe Act No. 20 of 2013, gives the Constitutional Court, Supreme Court and the High Court inherent power to develop customary law. It reads;

S176 Inherent powers of Constitutional Court, Supreme Court and High Court.

‘The Constitutional Court, the Supreme Court and the High Court have inherent power to protect and regulate their own process and to develop the common law or the customary law, taking into account the interests of justice and the provisions of this Constitution’.

Some scholars have stated that the insertion of the above clause in the Constitution has led to the piecemeal recording of living customary law.

In light of this write an overview of the nature and sources of customary law.

[20 marks]

QUESTION 4

The Republic of Zimbabwe will have its general elections this year (2025). There is a general concern which has been raised by rural communities on the involvement of Chiefs in political issues.

Chief Shumba is one of the chiefs who has been pointed out for criticising the ruling government on different social media platforms and around his community in Guruve. His house has also been used as a storage facility by the opposition party for food and campaigning material.

With reference to relevant authorities, write a legal opinion on the involvement of chiefs in political affairs and also the disciplinary procedures of chiefs in Zimbabwe.

[20 Marks]

QUESTION 5

- (a) Over the past year the role of Traditional Courts in our society has been prone to criticism. Some scholars have argued that, these court are archaic and they do not have a place in the modern court system while other scholars have labelled the courts as the custodians of our culture.

In light of the above discuss the **jurisdiction, advantages and disadvantages** of Traditional Courts in Zimbabwe. **[10 marks]**

(b) Chief Mboweni of Mutasa passed away on the 10th of October 2023. Soon after his burial the President of Zimbabwe unilaterally appointed Mabiza a villager as the new Chief of Mutasa. After hearing about the appointment, Thabiso the young brother to Chief Mboweni who was supposed to be the next Chief in terms of the Shona cultural practices approaches you for legal advice. He wants to challenge the unilateral appointment of Mabiza as Chief of Mutasa by the President of Zimbabwe.

Advise him on the following;

- (i) The procedure he must follow to resolve this dispute. **[5 Marks]**
- (ii) The arguments he can make to support his case. **[5 Marks]**

TOTAL MARKS: 70

END OF QUESTION PAPER.