



## **HERBERT CHITEPO LAW SCHOOL**

**BACHELOR OF LAWS HONOURS DEGREE**

**LEVEL 1 SEMESTER 2**

**EXAMINATION QUESTION PAPER**

**MODULE CODE: LLB124**  
**MODULE NARRATION: Customary Law**  
**DATE: June 2024**  
**DURATION: 3 HOURS**

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### **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

### Question 1 (This question is compulsory)

Madube is a 50 year old woman who resides in Gororo village which is located in Chivi. She has been married to Manhamo 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 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 the witchcraft activities.

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

Write a legal opinion advising Machuma on whether or not she can use her belief in witchcraft as a defense to the charge of murder and also how the Zimbabwean and South African criminal jurisprudence has grappled with this issue.

**[Total: 30 marks]**

### Section B

Answer any two questions from this section.

#### Question 2

After dating for 2 years, Chiedza and Njabulo decided to formalize their relationship by entering to 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.

After following the Shona traditional customary practices, Chiedza and Njabulo got married on the 14<sup>th</sup> of February 2024 under the registered customary law marriage. They received their marriage certificate on the 16<sup>th</sup> of February 2024 and which clearly indicated that they had entered into a Registered Customary Marriage Chapter 5:07. On the 20<sup>th</sup> of March 2024 Njabulo decided to divorce Chiedza for unknown reasons.

He approaches you for legal advice on the following issues;

- (a) Whether not payment of lobolo is requirement for the validity of a registered customary marriage? [15 marks]
- (b) Whether or not 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 (2024). 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 regalia for their supporters.

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]**

- (i) Chief Mboweni of Mutasa passed away on the 10<sup>th</sup> 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]**

**[Sub-total 20 marks]**

**TOTAL MARKS: 70**

**END OF QUESTION PAPER.**