

SOME MCQ FOR INDIGENOUS LAW:

Question 1

Indigenous African people observe legal rules and most rules for living, due to factors such as

- a) faithfulness to Christian values.
- b) fear of law-enforcing organs such as the police.
- c) public opinion and the fear of punishment.
- d) the availability of courts and judges.

Question 2

Specialised and unspecialised systems are similar because

- a) emphasis falls strongly on the group.
- b) the relations governed by law are the same.
- c) concrete evidence is very important.
- d) law originates with the ancestors.

Question 3

A customary marriage can only be dissolved

- (a) on the ground of the irretrievable breakdown of the marriage
- (b) by a family court, or a competent division of the High court or a divorce court, or an equality court
- (c) by the death of one of the spouses
- (d) if the court is satisfied that one of the parties has committed adultery resulting to the birth of a child.

Question 4

The implications of section 1 of the Law of Evidence Amendment Act 45 of 1988 are that

- a) Indigenous law must not be opposed to the principles of public policy or natural justice
- b) it is necessary for judges or magistrates to have any formal or practical knowledge of, or training in, indigenous law
- c) all courts must take judicial notice of indigenous law
- d) evidence about indigenous law must comply with common law principles.

Question 5

In customary law, succession

1. (a) takes place on the death of the principal wife.
2. (b) follows the principle of primogeniture.
3. (c) is a duty that cannot be relinquished or ceded.
4. (d) prevents a family head from transferring a younger son from one house to another house without a son during his lifetime.

Question 6

The betrothal agreement...

- a) is an enforceable contract in customary law.
- b) cannot be repudiated or terminated at any time.
- c) gives rise to a claim for breach of contract, in cases where it is terminated.
- d) creates certain rights and duties for the parties involved.

Question 7

Family rank

- (a) refers to the hierarchy of family members within the family group.
- (b) relates to a person's legal position within a nuclear family and to the hierarchy of the various houses that make up a household.
- (c) is determined by a combination of factors such as class and wealth.
- (d) is also determined by the rank of the father and the mother in a particular house.

Question 8

Which of the following statements apply to Lobolo?

- (a) It is a separate contract in a customary marriage.
- (b) It may be described as cattle or other property which, in consideration of an intended customary or civil marriage, the intended groom delivers to the bride's family
- (c) It entitles a man to the child-bearing capacity of his wife after it has been paid to her family group
- (d) It may be delivered and transferred only during the bride's lifetime.

Question 9

African customary law

- (a) is transmitted in writing from one generation to the next.
- (b) recognises a system according to which indigenous courts are bound to precedent.
- (c) believes that there are supernatural forces at work in the universe.
- (d) focuses on the rights of the individual person.

Question 10

According to the Oliviers, the legal requirements for a customary union entered into outside KwaZulu-Natal are the

- a) consent of the bride and the groom
- b) existence of a civil marriage
- c) negotiation of lobolo
- d) transfer of the bride to the bridegroom's family group

Question 11

A traditional leader may hear and decide civil cases...

- (1) which are instituted by black people against black people.
- (2) of people residing anywhere in South Africa.
- (3) concerning nullity, divorce or separation in respect of a civil marriage between black people.
- (4) involving offences of murder in their communities.

Question 12

Which of the following courts are NOT recognised in terms of the Constitution to apply indigenous law in South Africa?

- (1) Courts of Traditional leaders
- (2) Magistrate courts
- (3) Labour Courts
- (4) The Supreme court

Question 13

Which of the following refers to a person who keeps guard while his/her mate commits a crime?

- (1) An accomplice.
- (2) A co-perpetrator.
- (3) An accessory.
- (4) A co-accused.

Question 14

Which of the following does NOT constitute a ground for justification in criminal indigenous law?

- (1) Impossibility
- (2) Executing an official order
- (3) Institutional action
- (4) lack of intent

Question 15

Which of the following is a constitutionally acceptable form of punishment in indigenous law?

- (1) The death penalty
- (2) Imprisonment
- (3) Banishment
- (4) a fine

Question 16

According to indigenous law, the crime of rape occurs when a man...

- (1) unlawfully and intentionally hurts another's body.
- (2) consents with a woman to have sexual intercourse.
- (3) uses violence to force a woman not married to him to have sex with him
- (4) removes a woman's clothes to have sex with him

Question 17

Succession to traditional leadership in indigenous law...

- (1) follows the principle of primogeniture.
- (2) is gender neutral.
- (3) is a hereditary system which follows the patrilineage.
- (4) only happens where the traditional leader dies without brothers.

Question 18

Which of the following is an example of indigenous law determinations?

- (1) The allocation or refusal of residential and agricultural land.
- (2) The permission or refusal of immigration or emigration.
- (3) The permission or refusal to gather natural products from communal land.
- (4) The allocation of date to families for burial purposes.

Question 19

The Sotho maxim 'kgosi ke kgosi ka batho' (a king or ruler is a king or ruler through his people) means that the ruler must...

- (1) act in accordance with the will of his people.
- (2) consider the decisions of only his council when making decisions.
- (3) not be unfair when making administrative determinations.
- (4) consulted when members of his community make family decisions.

Question 20

One of the main objects of dispute resolution in customary law is....

- (1) to determine the guilty party.
- (2) to assist the parties to be friends.
- (3) to reconcile the parties.
- (4) to share a meal after the trial.

ANSWERS:

Question 1

The most accurate statement is (3). There are several reasons why people voluntarily observe the rules for living in indigenous communities. The fear of punishment is one of them.

Question 2

The most accurate statement is (2). The relations governed by law in both systems are the same.

Question 3

The most accurate statement is (1). The Recognition of customary marriages Act 120 of 1998 under section 8 (1) recognises the ground

of irretrievable breakdown of marriage as the only ground for divorce and thus the dissolution of customary marriages.

Question 4

The most accurate statement is (1). One of the implications of section 1 of the Law of Evidence Amendment Act 45 of 1988 is that Indigenous law must not be opposed to the principles of public policy or natural justice.

Question 5

The most accurate statement is (3). In customary law, succession rather follows the principle of male primogeniture. That is why statement 2 is incorrect and the most correct statement here is that succession in customary law is a duty that cannot be relinquished or ceded.

Question 6

The most accurate statement is (4). A betrothal agreement creates certain rights and duties for the parties involved in African customary law.

Question 7

The most accurate statement is (2). Family rank relates to a person's legal position within a nuclear family and to the hierarchy of the various houses that make up a household.

Question 8

The most accurate statement is (3). Lobolo entitles a man to the child-bearing capacity of his wife after it has been paid to her family group.

Question 9

The most accurate statement is (3). African customary law believes that there are supernatural forces at work in the universe.

Question 10

The most accurate statement is (4). According to Oliviers, the legal requirements for a customary union entered into outside KwaZulu-Natal are the transfer of the bride to the bridegroom's family group.

Question 11

The most accurate statement is (1). A traditional leader may hear and decide civil cases which are instituted by black people against black people.

Question 12

The most accurate statement is (3). Apart from the labour courts of South Africa, all other courts are obliged to apply customary law.

Question 13

The most accurate statement is (1). A person who keeps guard while is/her mate commits a crime is referred to as an accomplice.

Question 14

The most accurate statement is (4). Apart from lack of intent, all the other are grounds for justification in criminal law.

Question 15

The most accurate statement is (4). A fine is a constitutionally acceptable form of punishment in indigenous law.

Question 16

The most accurate statement is (3). According to indigenous law, the crime of rape occurs when a man uses violence to force a woman not married to him to have sex with him.

Question 17

The most accurate statement is (3). Succession to Traditional leadership in indigenous law is a hereditary system which follows the patrilineage.

Question 18

The most accurate statement is (4). The allocation or refusal of the date for burial to families is not an example of indigenous law determinations.

Question 19

The most accurate statement is (1). The Sotho maxim 'kgosi ke gkosi ka batho' (a king or ruler is a king or ruler through his people) means that the ruler must act in accordance with the will of his people.

Question 20

The most accurate statement is (3). One of the objects of dispute resolution in customary law is to reconcile the parties.

MORE QUESTIONS:

Question 1

Indicate the correct statement.

Conflict between customary law and the Bill of Rights is unavoidable. There are however indications that fundamental rights have priority over customary law, namely:

- a) The rights in the Bill of Rights may be limited by any law.
- b) The courts must promote the values that underlie an undemocratic society.
- c) The Bill of Rights is only applicable to customary law.
- d) The Constitution is the supreme law.

- (1) All the statements are correct.
- (2) Only statement (c) is correct.
- (3) Only statement (d) is correct.
- (4) Only statements (a) and (b) are correct.
- (5) Only statements (b) and (d) are correct.

Question 2

Indicate the correct statement.

Specialised and unspecialised systems are different because:

- a) emphasis falls strongly on the group
- b) a transgression of the law and legal rules will have certain, specific consequences for the transgressors
- c) of the religious element
- d) kinship plays a dominant role in the legal life

- (1) Only statements (a); (c) and (d) are correct
- (2) Only statement (b) is correct.
- (3) All the statements are correct.
- (4) Only statement (a) is correct.
- (5) None of the statements is correct.

Question 3

Indicate the correct statement.

In customary law, a person's status is influenced by the following factors:

- (a) sex
- (b) age
- (c) popularity
- (d) rank

- (1) All the statements are correct.
- (2) Only statement (c) is correct.
- (3) Only statements (a) and (b) is correct.

- (4) Only statements (a); (b) and (d) are correct.
- (5) Only statements (b) and (d) are correct.

Question 4

Indicate the correct statement.

The traditional indigenous marriage:

- a) was dissolved by the husband and wife as individuals
- b) could only be dissolved by a court of law
- c) resulted in the establishment of a new house estate
- d) could only be concluded between individuals who were majors

- (1) None of the statements is correct.
- (2) Only statement (c) is correct.
- (3) Only statements (a); (b) and (c) are correct.
- (4) Only statements (a); (b) and (d) are correct.
- (5) Only statements (b); (c) and (d) are correct.

Question 5

Indicate the correct statement.

If either of the prospective spouses to a customary marriage is a minor,

- a) both his or her parents or if he or she has no parents, his or her legal guardian must consent to the marriage
- b) the commissioner of child welfare may grant consent to the marriage if the consent of the parent or guardian cannot be obtained
- c) the commissioner of child welfare may give consent even if either of the parents or guardian refuses to grant consent
- d) the Minister of Home Affairs may grant written permission to conclude the marriage

- (1) None of the statements is correct.
- (2) Only statement (a) is correct.
- (3) All the statements are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (a); (b) and (d) are correct.

Question 6

Indicate the correct statement. A woman in customary law,

- a) may never inherit property from her deceased father
- b) has equal status and capacity with her husband if she is married
- c) can acquire and dispose of assets if she is a wife in a customary marriage
- d) can now succeed to the position of family head amongst all the indigenous African people of South Africa

- (1) Only statements (a); (b) and (c) are correct.

- (2) Only statements (a); (b) and (d) are correct.
- (3) All the statements are correct.
- (4) Only statements (b) and (c) are correct.
- (5) Only statements (b); (c) and (d) are correct.

Question 7

Indicate the correct statement.

The ukuthleleka custom in customary law:

- (a) is practised by some South Nguni people
 - (b) entails that the wife is “impounded” by her people
 - (c) is used for the maintenance of the woman
 - (d) means that the lobolo is delivered in instalments
- (1) Only statements (a); (b) and (c) are correct.
 - (2) Only statements (b); (c) and (d) are correct.
 - (3) Only statements (a); (c) and (d) are correct.
 - (4) All the statements are correct.
 - (5) Only statements (a); (b) and (d) are correct.

Question 8

Indicate the correct statement.

Section 211(3) of the 1996 Constitution has the following implications:

- (a) The recognition and application of customary law is subject to the Bill of Rights.
 - (b) All courts may apply and must recognise customary law.
 - (c) It is not necessary for judges to have any formal training in customary law.
 - (d) The recognition and application of customary law is subject to general legislation.
- (1) None of the statements is correct.
 - (2) All the statements are correct.
 - (3) Only statement (a) is correct.
 - (4) Only statements (a); (b) and (d) are correct.
 - (5) Only statements (b); (c) and (d) are correct.

Question 9

Indicate the correct statement.

In customary law, house property:

- 1. (a) belongs to the household as a whole
 - 2. (b) is controlled by the family head
 - 3. (c) includes property of the family head’s mother’s house to which he has succeeded
 - 4. (d) may be defined as property that belongs to a person who has acquired it , although it may be under the control of the family head
- (1) None of the statements is correct.

- (2) Only statements (a); (b) and (d) are correct.
- (3) Only statements (b); (c) and (d) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (a); (b) and (c) are correct.

Question 10

Indicate the correct statement.

In the case of *Bhe and Others v Magistrate, Khayelitsha, and Others* (Commission for Gender Equality as Amicus Curiae) 2005 (1) BCLR 1 (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated thereunder to be unconstitutional and invalid because:

- a) the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour
- b) the combined effect of section 23 and the regulations was to put in place a succession scheme which discriminated on the basis of race and colour applying only to White people
- c) the discrimination it perpetrated was an affront to the dignity of those that it governed
- d) it was inconsistent with the right to life guaranteed in section 11 of the Constitution

- (1) All the statements are correct.
- (2) Only statements (a) and (c) are correct.
- (3) Only statement (c) is correct.
- (4) Only statements (a); (b) and (d) are correct.
- (5) Only statement (b) is correct.

Question 11

Indicate the correct statement.

In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, the power to appoint a king vests with:

- (1) the president
- (2) the premiers of the different provinces
- (3) the National House of Traditional Leaders
- (4) parliament

Question 12

Indicate the correct statement.

The fine for contempt of court is used for the following in indigenous law:

- (1) the maintenance of the messengers
- (2) payment of the salary of the traditional council members
- (3) as an offering to the ancestors
- (4) compensation to the court for the time its members spent on the case

Question 13

Indicate the correct statement.

Which of the following are some of the known presumptions in indigenous law?

- (1) The children of a married woman are the children of her husband.
- (2) An adult is mentally sound, until there is evidence to the contrary.
- (3) A person may voluntarily entrust pieces of personal clothing to a stranger.
- (4) Only (1) and (2) are correct.

Question 14

Indicate the correct statement.

Which of the following persons are competent to testify in indigenous law:

- (1) all persons
- (2) all children
- (3) a co-accused for or against one another
- (4) all of the above persons

Question 15

Indicate the correct statement.

The differences between a crime and a delict are:

- (1) In a crime the offender is punished, where as in a delict damages are payable to the party that was harmed.
- (2) In a crime not all members of the community are harmed whereas in a delict all members of the community are harmed.
- (3) In a crime the property of an agnatic group is affected whereas in a delict public property is affected.
- (4) A crime is punishable by community service whereas a delict is punishable by solitary confinement.

Question 16

Indicate the correct statement.

Which of the following statements is true in respect of punishment that a traditional leader may impose?

- (1) He may not impose a sentence which entails death, mutilation, grievous bodily harm or imprisonment.
- (2) He may not impose a fine in excess of R40.
- (3) He may not impose corporal punishment, except in the case of unmarried males below the apparent age of 30 years.
- (4) All of the above statements are true.

Question 17

Indicate the correct statement.

Which of the following is an element of a crime in indigenous law ?

- (1) The act must be performed in broad daylight.
- (2) The act must be unlawful.
- (3) The act must be performed by several person against one person.
- (4) All of the above are elements of a crime in indigenous law.

Question 18

Indicate the correct statement.

The following are some of the main principles of the indigenous court:

- (1) the onus is on the accused to prove his innocence in court.
- (2) the sessions of indigenous courts are held in public.
- (3) all parties must be present during trials.
- (4) All of the above.

Question 19

Indicate the correct statement.

The ukungena custom is applied where:

- (1) the husband is incapable of having children
- (2) the husband dies without a son by the tribal wife to succeed him
- (3) the tribal wife dies without a son
- (4) the tribal wife is barren

Question 20

Indicate the correct statement.

Which of the following will the Premier of a province engage in to recognise a senior traditional leader, headman or headwoman?

- (1) issue a notice in the provincial gazette recognising the person so identified
- (2) issue a certificate of recognition to the identified person
- (3) inform the relevant House of Traditional leaders of the recognition of the senior traditional leader, headman or headwoman
- (4) all of the above actions

QUESTION 1

The correct answer is (3). Only statement (d) is correct.

One of the indications that show that fundamental rights have priority over customary law is provided by section 2 of the Constitution that the Constitution is the supreme law

QUESTION 2

The correct answer is (1). Only statements (a) (c) and (d) are correct.

Specialised and Unspecialised systems are different because:

- (a) emphasis falls strongly on the group;
- (b) of the religious element;
- (c) kinship plays a dominant role in the legal life.

QUESTION 3

The correct answer is (4). Only statements (a); (b) and (d) are correct.

In customary law, a person's status is influenced by the following factors.

- (a) Sex
- (b) Age
- (d) Rank

QUESTION 4

The correct answer is (2). Only statement (c) is correct.

The traditional indigenous marriage:

- (c) Resulted in the establishment of a new house estate.

QUESTION 5

The correct answer is (5). Only statements (a), (b) and (d) are correct.

If either of the prospective spouses to a customary marriage is a minor,

- (a) Both his or her parents or if he or she has no parents, his or her legal guardian must consent to the marriage.
- (b) The Commissioner of child welfare may grant consent to the marriage if the consent of the parent or guardian cannot be obtained.
- (c) The Minister of Home Affairs may grant written permission to conclude the marriage.

QUESTION 6

The correct statement is (4). Only statements (b) and (c) are correct.

A woman in customary law,

- (b) Has equal status and capacity with her husband if she is married.
- (c) Can acquire and dispose of assets if she is a wife in a customary marriage.

QUESTION 7

The correct answer is (5). Only statements (a), (b) and (d) are correct.
The Ukuthleka custom in customary law:

- (a) is practised by some South Nguni people;
- (b) entails that the wife is “impounded” by her people;
- (d) means that lobolo is delivered in instalments;

QUESTION 8

The correct answer is (3). Only statement (a) is correct.
Section 211(3) of the 1996 Constitution has the following implication
(a) The recognition and application of customary law is subject to the Bill of Rights.

QUESTION 9

The correct answer is (1). None of the statements is correct.

QUESTION 10

The correct answer is (2). Only statements (a), (c) are correct.
In the case of: Bhe and Others v. The Magistrate of Kayelitsha, and others (Commission for Gender Equality as Amicus Curiae) 2005 (1) BCLR (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated there under to be unconstitutional and invalid because:
(a) the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour;
(c) the discrimination it perpetrated was an affront to the dignity of those that it governed.

QUESTION 11

The most accurate statement is (1). In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, the power to appoint a King vests with the President.

QUESTION 12

The most accurate statement is (4). The fine for contempt of court in African customary law is used as compensation to the court for the time its members spent on the case.

QUESTION 13

The most accurate statement is (4). Some of the well known presumptions in African customary law are that children of a married woman are the children of the husband; and that an adult is mentally sound until there is evidence to the contrary.

QUESTION 14

The most accurate statement is (4). All the statements give persons who are competent to testify in African customary law.

QUESTION 15

The most accurate statement is (1). The differences between a crime and a delict is that in a crime the offender is punished, where as in a delict damages are payable to the party that was harmed.

QUESTION 16

The most accurate statement is (4). A traditional leader is competent to impose any of the punishments outlined in the statements.

QUESTION 17

The most accurate statement is (2). One of the elements of a crime in African customary law is that the Act must be unlawful.

QUESTION 18

The most accurate statement is (4). All the statements outlined refer to the main principles of the indigenous court.

QUESTION 19

The most accurate statement is (2). The Ukungena custom is applied where the husband dies without a son by the tribal wife to succeed him.

QUESTION 20

The most correct statement is (4) The premier will engage in all the outlined statements to recognise a senior traditional leader, headman or headwoman.

INDIGENOUS LAW MULTIPLE CHOICE QUESTIONS 2015 - 2018

2015

Question 1

“Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people”. This definition is found in ..

- 1) Section 1 of the Recognition of Customary Marriages Act 120 of 1998.
- 2) Section 1 of the Traditional Leadership and Governance Framework Act 41 of 2003.
- 3) Section 1 of the Reform of Customary Law of Succession and

Regulation of Related Matters Act 11 of 2009.

4) Section 1 of the Black Administration Act 38 of 1927.

Question 2

The characteristic of customary law that is expressed as group versus individual orientation means that

- 1) emphasis of the law is placed on the parties concerned in a dispute
- 2) although the family head was nominally the owner of the family property, he was not liable for debts of the other members of the family home
- 3) individuals function within the context of the group to which they belong
- 4) the rights emanating from the seduction of a girl could only be claimed from the perpetrator by herself to the exclusion of family members

Question 3

One of the following sections in the Constitution of South Africa does not signify recognition of customary law, which one is it?

- 1) Section 2
- 2) Section 15
- 3) Section 31
- 4) Section 112

Question 4

Which of the following are some of the known presumptions in indigenous law?

- 1) The children of a married woman are the children of her husband.
- 2) An adult is insane until there is evidence to the contrary.
- 3) A person may voluntarily entrust pieces of personal clothing to a

stranger.

- 4) A person may voluntarily lie prostrate to be hit at the back.

Question 5

The group has identified a leader amongst them and wish to appoint him as a senior traditional leader in their new community. Whom can they approach to make the appointment?

- 1) The President of South Africa.
- 2) The Premier of their Province.
- 3) The Provincial House of Traditional Leaders
- 4) The National House of Traditional Leaders.

Question 6

Which statement illustrates some of the steps that need to be taken by the appointing authority in effecting the appointment?

- 1) Notify the previous traditional leader of the intention to recognise and appoint the new leader.
- 2) Publish the appointment in the *Government Gazette*.
- 3) Notify the National House of Traditional leaders.
- 4) Send a copy of the letter of appointment to the office of the President of the Republic of South Africa.

Question 7

Section 4(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 lists functions of traditional councils.

- 1) 2
- 2) 4
- 3) 8
- 4) 12

Question 8

The conflict between customary law norms and provisions of fundamental rights outlawing discrimination

- 1) is not specifically resolved by the Constitution
- 2) is directly regulated by section 2 and 36(i) of the Constitution
- 3) is directly regulated by section 5(8)(i) of the Constitution
- 4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

Question 9

The effect of the decision taken in the *Moseneke* case was that between 2002 and 2004, an intestate estate of a black person reported to the Master was administered in terms of

- 1) customary law.
- 2) native law.
- 3) zulu code.
- 4) common law.

Question 10

Ukuvusa custom may be applied if

- 1) a married man dies childless.
- 2) an unmarried male dies.
- 3) a female dies childless.
- 4) the wife cannot bear children.

Question 11

The Recognition of Customary Marriages Act 120 of 1998 recognizes polygynous marriages, defined as

- 1) a woman marrying more than one man.

- 2) a man marrying more than one woman.
- 3) a woman marrying another woman.
- 4) a man marrying not more than one woman.

Question 12

Indigenous African people observe legal rules and most rules for living, due to factors such as

- 1) faithfulness to Christian values.
- 2) fear of law-enforcing organs such as the police.
- 3) public opinion and the fear of punishment.
- 4) the availability of courts and judges.

Question 13

Specialised and unspecialised systems are similar because

- 1) emphasis falls strongly on the group.
- 2) the relations governed by law are the same.
- 3) concrete evidence is very important.
- 4) law originates with the ancestors.

Question 14

Which of the following factors influenced a person's status in customary law?

- 1) wealth
- 2) class
- 3) popularity
- 4) rank

Question 15

A customary marriage can only be dissolved

- 1) on the ground of the irretrievable breakdown of the marriage.
- 2) a family court, or a competent division of the High court or a divorce court, or an equality court.
- 3) by the death of one of the spouses.
- 4) if the court is satisfied that one of the parties has committed adultery resulting to the birth of a child.

Question 16

Which of the following courts are **NOT** recognised in terms of the Constitution to apply indigenous law in South Africa?

- 1) Courts of Traditional leaders
- 2) Magistrate courts
- 3) Labour Courts
- 4) The Supreme court

Question 17

In the case of *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae)* 2005 (1) BCLR 1 (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated thereunder to be unconstitutional and invalid because

- 1) the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour.
- 2) the combined effect of section 23 and the regulations was to put in place a succession scheme which discriminated on the basis of race and colour applying only to white people.
- 3) the discrimination it perpetrated was an affront to the dignity of white persons.
- 4) it was inconsistent with the right to life guaranteed in section 11 of the Constitution.

Question 18

The following are some of the main principles of the customary law court.

- 1) Only adult males are free to attend the court sessions.
- 2) The sessions of indigenous courts are held in private.
- 3) All parties must be represented during trials.
- 4) The onus is on the accused to prove his innocence in court.

Question 19

Succession to traditional leadership in African customary law

- 1) follows the principle of primogeniture.
- 2) is gender neutral.
- 3) is a hereditary system which follows the patrilineage.
- 4) only happens where the traditional leader dies without brothers.

Question 20

Which of the following is NOT an example of indigenous law determinations?

- 1) The allocation or refusal of residential and agricultural land.
- 2) The permission or refusal of immigration or emigration.
- 3) The permission or refusal to gather natural products from communal land.
- 4) The allocation of date to families for burial purposes.

Answers**Question 1**

The most accurate statement is (1). Section 1 of The Recognition of Customary Marriages Act 120 of 1998 outlines this definition of customary law.

Question 2

The most accurate statement is (3). Functioning of individuals within a group signifies the groupness or communal relations as opposed to the individualistic orientation.

Question 3

The most accurate statement is (1). Only section 2 does not point to the recognition of customary law in the Constitution. This section only addresses the issue of the supremacy of the Constitution of South Africa.

Question 4

The most accurate statement is (1). One of the presumptions known in indigenous law is that the children of a married woman are the children of her husband.

Question 5

The most accurate statement is (2). According to section 11(1)(b) of the Traditional Leadership Governance Framework Act 41 of 2003 the Premier of the province where the traditional community is located appoints senior traditional leaders.

Question 6

The most accurate statement is (2). One of the steps that needs to be taken by the appointing authority in effecting the appointment would be to publish it in the Government Gazette in terms of section 11(2)(b)(i) of the Traditional Leadership and Governance Framework Act 41 of 2003.

Question 7

The most accurate statement is (4). A total of 12 functions of traditional councils are listed under section 4(1) of the Traditional Leadership and Governance Framework Act 41 of 2003.

Question 8

The most accurate statement is (1). It is clear that the Constitution does not specifically address the question of how the conflict between customary norms and provisions of fundamental rights will be resolved.

Question 9

The most accurate statement is (4). The effect of the Moseneke decision was that between 2002 and 2004, an intestate estate of a black person was to be administered in accordance with Common Law.

Question 10

The most accurate statement is (2). The 'Ukuvusa' custom is applicable where an unmarried male person dies.

Question 11

The most accurate statement is (2). A polygamous marriage is defined by the Recognition of Customary Marriages Act 120 of 1998 as a marriage by a man with more than one woman.

Question 12

The most accurate statement is (3). Indigenous African people observe legal rules and most rules for living due to factors such as public opinion and the fear of punishment.

Question 13

The most accurate statement is (2). Specialised and unspecialised systems are similar because the relations governed by law are the same for all legal systems. Such relations can for instance be between organs of state and subjects.

Question 14

The most accurate statement is (4). Rank relates to a person's legal position within a family and people's rank influences the status they occupy within such a family.

Question 15

The most accurate statement is (1). According to the Recognition of

Customary Marriages Act 120 of 1998, the ground of irretrievable breakdown of marriage is the only one recognised for the dissolution of a customary marriage.

Question 16

The most accurate statement is (3). Apart from the labour courts of South Africa, all other courts are obliged to apply customary law.

Question 17

The most accurate statement is (1). The *Bhe* case held section 23 of the Black Administration Act 38 of 1927 and its regulations to be unconstitutional and invalid because this legislation was manifestly racist in its purpose and effect due to its perpetuation of discrimination on the grounds of race and colour.

Question 18

The most accurate statement is (4). One of the main principles of a customary law court is that the onus to prove their innocence is on the accused person.

Question 19

The most accurate statement is (3). Succession to traditional leadership in indigenous law is a hereditary system which follows the patrilineage.

Question 20

The most accurate statement is (4). The allocation or refusal of the date for burial to families is not an example of indigenous law determinations.

2015**Question 1**

Specialised and unspecialised systems are different because in the unspecialised systems .

1) emphasis falls strongly on the group.

- 2) a transgression of the law and legal rules will have certain, specific consequences for the transgressors
- 3) relations are governed by law
- 4) decisions are only taken by the family head.

Question 2

One of the indications that fundamental rights have priority over customary law is that the .

- 1) rights in the Bill of Rights may be limited by any law.
- 2) courts must promote the values that underlie an undemocratic society.
- 3) Bill of Rights is only applicable to customary law.
- 4) Constitution is the supreme law.

Question 3

The betrothal agreement ..

- 1) is an enforceable contract in customary law.
- 2) cannot be repudiated or terminated at any time.
- 3) gives rise to a claim for breach of contract, in cases where it is terminated.
- 4) creates certain rights and duties for the parties involved.

Question 4

In customary law, succession

- 1) takes place on the death of the principal wife.
- 2) follows the principle of primogeniture.
- 3) is a duty that cannot be relinquished or ceded.
- 4) prevents a family head from transferring a younger son from one house to another house without a son during his lifetime.

Question 5

A woman in customary law .

- 1) may never inherit property from her deceased father.
- 2) has equal status and capacity with her husband in a customary marriage.
- 3) cannot acquire and dispose of assets if she is a wife in a customary marriage.
- 4) can succeed to the position of family head at her husband's discretion.

Question 6

Which of the following statements apply to the *ukutheleka* custom?

- 1) It is practised by some Sotho tribes
- 2) It entails that the wife is “kidnapped” by her people
- 3) It is used for the maintenance of the woman
- 4) It means that the *lobolo* is delivered in instalments.

Question 7

Which of the following is an element of a crime in customary law?

- 1) The act must be performed in broad daylight.
- 2) The act must be unlawful.
- 3) The act must be performed by several people against one person.
- 4) The act must be against cultural institutional acts.

Question 8

In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, the power to appoint a king vests with

- 1) the president.

- 2) the premiers of the different provinces.
- 3) the National House of Traditional Leaders.
- 4) parliament.

Question 9

The *ukungena* custom is applied where

- 1) the husband is incapable of having children.
- 2) the husband dies without a son .
- 3) the tribal wife dies without a son.
- 4) the tribal wife is incapable of having children.

Question 10

Which of the following will the Premier of a province engage in to recognise a senior traditional leader, headman or headwoman?

- 1) issue a notice in the provincial gazette recognising the person so identified
- 2) call a tribal council meeting to announce the appointment.
- 3) appoint the particular traditional leader to the relevant House of Traditional leaders.
- 4) organise a celebration of the appointment in the community.

Question 11

The concrete versus the abstract approach that is characteristic of customary law means that

- 1) While specialised legal systems adopt the abstract approach, unspecialised legal systems are more concrete, real and visible in approach.
- 2) Specialized legal systems are marked by visible acts such as signing of a marriage register to signify the conclusion of a marriage contract.
- 3) In specialised legal systems, performance or part performance is

required in the formulation of contracts.

4) proof for adultery in specialised legal systems was obtained by catching the culprit in the act and taking some of his personal belongings.

Question 12

The right to culture that is protected under section 30 and 31 of the Constitution implies that the state must

- 1) force all courts to apply and therefore recognise customary law
- 2) ensure that the recognition of customary law is subject to the Bill of Rights
- 3) preserve the existence and identity of cultural groups
- 4) determine and pass legislation that is specifically applicable to customary law

Question 13

In terms of the court's decision in the case of ***Shilubana v Nnamitwa*** ...

- 1) traditional authorities may update and change customary law to fit in with the living customary law.
- 2) traditional communities may develop customary law in accordance with norms and values of the Constitution
- 3) traditional authorities should always align and develop customary law in accordance with norms and values of the Constitution.
- 4) traditional authorities should make sure that customary law is aligned with gender considerations.

Question 14

Which sentence below most accurately describes the effect of section 39 of the Constitution?

- 1) When interpreting the Bill of Rights, a court, tribunal or forum must consider foreign law.

- 2) When interpreting the Bill of Rights, a court, tribunal or forum may consider international law.
- 3) When interpreting the Bill of Rights, a court, tribunal or forum must promote the spirit, purport and objects thereof.
- 4) When interpreting the Bill of Rights, a court, tribunal or forum may promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

Question 15

One of the implications of section 211 on the recognition of traditional leaders is that

- 1) All persons have a right to their language and cultural choice.
- 2) The state has to allow the existence of institutions that would be necessary to maintain people's culture
- 3) The recognition and application of customary law is subject to the Bill of Rights.
- 4) Legislation recognising systems of personal and family law under any tradition should be allowed by the state.

Question 16

The..... has the authority to recognise a traditional community in terms of the law.

- 1) President of the Republic of South Africa
- 2) Provincial house of traditional leaders
- 3) Premier of a province under which the community falls
- 4) King or queen under whose authority the community falls.

Question 17

The conflict between customary law norms and provisions of fundamental rights outlawing discrimination

- 1) is not specifically resolved by the Constitution

- 2) is directly regulated by section 2 and 36(i) of the Constitution
- 3) is directly regulated by 5(8)(i) of the Constitution
- 4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

Question 18

Prior to 5 December 2002, intestate estates of black persons were administered by the

- 1) magistrate's court.
- 2) tribal court.
- 3) chief's court.
- 4) High Court.

Question 19

In the *Moseneke* decision, the provisions of section 23(2) of the Black Administration Act were allowed to be followed for only

- 1) 2 years.
- 2) 3 years.
- 3) 4 years.
- 4) 1 year.

Question 20

In terms of the Recognition of Customary Marriages Act

- 1) marriages not registered in terms of the Act are void.
- 2) parties to an unregistered marriage are liable to a fine.
- 3) unregistered marriages are awarded a status of a union.
- 4) the customary marriage is not void for failure to register.

Answers

Question 1

The most accurate statement is (1). In unspecialised legal systems, emphasis falls strongly on the group rather than on the individual. The individual functions entirely within the context of the group. In specialised legal system, the emphasis falls very strongly on the individual.

Question 2

The most accurate statement is (4). The supremacy of the constitution as provided for in section 2 indicates that customary law may not be opposed to the provisions of the constitution that includes the fundamental rights protected under the constitution.

Question 3

The most accurate statement is (4). A betrothal agreement creates certain rights and duties for the parties involved in African customary law.

Question 4

The most accurate statement is (3). In customary law, succession follows the principle of male primogeniture. Therefore the most correct statement is that succession in customary law is a duty that cannot be relinquished or ceded.

Question 5

The most accurate statement is (2). In terms of section 6 of Act 120 of 1998 a wife in customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity to acquire and dispose of assets and to enter into contracts and litigate.

Question 6

The most accurate statement is (4). The *ukuthleleka* custom is found among some South Nguni, whereby the marriage goods are delivered in “instalments” after the wife has been transferred to her husband group. Please note that the word “kidnapped” as used in option 2 has some

criminal connotation and has no place in African customary practices.

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The most accurate statement is (1).

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The most accurate statement is (1). See section 9 of the Traditional Leadership and Governance Framework Act 41 of 2003.

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The most accurate statement is (1). See section 11 of the Traditional Leadership and Governance Framework Act 41 of 2003.

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The most accurate statement is (1). The concrete versus the abstract approach that is characteristic of customary law means that while specialized legal systems adopt the abstract approach, unspecialized legal systems are more concrete, real and visible in approach.

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The most accurate statement is (3). The right to culture that is protected under section 30 and 31 of the Constitution implies that the state must preserve the existence and identity of cultural groups.

Question 13

The most accurate statement is (2). In terms of the court's decision in the case of ***Shilubana v Nnamitwa*** traditional communities may develop customary law in accordance with norms and values of the

Constitution.

Question 14

The most accurate statement is (3). When interpreting the Bill of Rights, a court, tribunal or forum must promote the spirit, purport and objects thereof.

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The most accurate statement is (3). The Premier of a province under which the community falls has the authority to recognise a traditional community in terms of the law.

Question 17

The most accurate statement is (1). The conflict between customary law norms and provisions of fundamental rights outlawing discrimination is not specifically resolved by the Constitution.

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Which of the following statements does NOT apply to the ukutheleka custom?

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The conflict between customary law norms and provisions of fundamental rights outlawing discrimination.....

- 1) is not specifically resolved by the Constitution
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Question 7

The most accurate statement is (2).

Question 8

The most accurate statement is (1). See section 9 of the Traditional Leadership and Governance Framework Act 41 of 2003.

Question 9

The most accurate statement is (2). The ukungena custom applies where a husband died without a son and the younger brother or a male relative of the deceased takes over the widow to produce a son who will carry on the family name of the deceased husband.

Question 10

The most accurate statement is (1). See section 11 of the Traditional Leadership and Governance Framework Act 41 of 2003.

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The most accurate statement is (1). The conflict between customary law norms and provisions of fundamental rights outlawing discrimination is not specifically resolved by the Constitution.

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Question 20

The most accurate statement is (4). In terms of the Recognition of Customary Marriages Act the customary marriage is not void for failure to register.

2016

Question 1

"Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people". This definition is found in.....

- 1) Section 1 of the Recognition of Customary Marriages Act 120 of 1998.
- 2) Section 1 of the Traditional Leadership and Governance Framework Act 41 of 2003.
- 3) Section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009.
- 4) Section 1 of the Black Administration Act 38 of 1927.

Question 2

The characteristic of customary law that is expressed as group versus individual orientation means that.....

- 1) emphasis of the law is placed on the parties concerned in a dispute
- 2) although the family head was nominally the owner of the family

property, he was not liable for debts of the other members of the family home

3) individuals function within the context of the group to which they belong

4) the rights emanating from the seduction of a girl could only be claimed from the perpetrator by herself to the exclusion of family members

Question 3

One of the following sections in the Constitution of South Africa does not signify recognition of customary law. Which one is it?

1) Section 2

2) Section 15

3) Section 31

4) Section 112

Question 4

Which of the following are some of the known presumptions in indigenous law?

1)The children of a married woman are the children of her husband.

2)An adult is insane until there is evidence to the contrary.

3)A person may voluntarily entrust pieces of personal clothing to a stranger.

4)A person may voluntarily lie prostrate to be hit at the back.

Question 5

The group has identified a leader amongst them and wish to appoint him as a senior traditional leader in their new community. Whom can they approach to make the appointment?

1) The President of South Africa.

- 2) The Premier of their Province.
- 3) The Provincial House of Traditional Leaders
- 4) The National House of Traditional Leaders.

Question 6

Which statement illustrates some of the steps that need to be taken by the appointing authority in effecting the appointment?

- 1) Notify the previous traditional leader of the intention to recognise and appoint the new leader.
- 2) Publish the appointment in the Government Gazette.
- 3) Notify the National House of Traditional leaders.
- 4) Send a copy of the letter of appointment to the office of the President of the Republic of South Africa.

Question 7

Section 4(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 lists functions of traditional councils.

- 1) 2
- 2) 4
- 3) 8
- 4) 12

Question 8

The conflict between customary law norms and provisions of fundamental rights outlawing discrimination....

- 1) is not specifically resolved by the Constitution
- 2) is directly regulated by section 2 and 36(i) of the Constitution
- 3) is directly regulated by section 5(8)(i) of the Constitution

4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

Question 9

The effect of the decision taken in the Moseneke case was that between 2002 and 2004, an intestate estate of a black person reported to the Master was administered in terms of ...

- 1) customary law.
- 2) native law.
- 3) zulu code.
- 4) common law.

Question 10

Ukuvusa custom may be applied if ...

- 1) a married man dies childless.
- 2) an unmarried male dies.
- 3) a female dies childless.
- 4) the wife cannot bear children.

Question 11

The Recognition of Customary Marriages Act 120 of 1998 recognizes polygynous marriages, defined as

- 1) a woman marrying more than one man.
- 2) a man marrying more than one woman.
- 3) a woman marrying another woman.
- 4) a man marrying not more than one woman.

Question 12

Indigenous African people observe legal rules and most rules for living, due to factors such as ...

- 1) faithfulness to Christian values.
- 2) fear of law-enforcing organs such as the police.
- 3) public opinion and the fear of punishment.
- 4) the availability of courts and judges.

Question 13

Specialised and unspecialised systems are similar because ...

- 1) emphasis falls strongly on the group.
- 2) the relations governed by law are the same.
- 3) concrete evidence is very important.
- 4) law originates with the ancestors.

Question 14

Which of the following factors influenced a person's status in customary law?

- 1) wealth
- 2) class
- 3) popularity
- 4) rank

Question 15

A customary marriage can only be dissolved ...

- 1) on the ground of the irretrievable breakdown of the marriage.
- 2) a family court, or a competent division of the High court or a divorce court, or an equality court.
- 3) by the death of one of the spouses.
- 4) if the court is satisfied that one of the parties has committed adultery resulting to the birth of a child.

Question 16

Which of the following courts are NOT recognised in terms of the Constitution to apply indigenous law in South Africa?

- 1) Courts of Traditional leaders
- 2) Magistrate courts
- 3) Labour Courts
- 4) The Supreme court

Question 17

In the case of *Bhe and Others v Magistrate, Khayelitsha, and Others* (Commission for Gender Equality as Amicus Curiae) 2005 (1) BCLR 1 (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated thereunder to be unconstitutional and invalid because..

- 1) the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour.
- 2) the combined effect of section 23 and the regulations was to put in place a succession scheme which discriminated on the basis of race and colour applying only to white people.
- 3) the discrimination it perpetrated was an affront to the dignity of white persons.
- 4) it was inconsistent with the right to life guaranteed in section 11 of the Constitution.

Question 18

The following are some of the main principles of the customary law court.

- 1) Only adult males are free to attend the court sessions.
- 2) The sessions of indigenous courts are held in private.
- 3) All parties must be represented during trials.

- 4) The onus is on the accused to prove his innocence in court.

Question 19

Succession to traditional leadership in African customary law...

- 1) follows the principle of primogeniture.
- 2) is gender neutral.
- 3) is a hereditary system which follows the patrilineage.
- 4) only happens where the traditional leader dies without brothers.

Question 20

Which of the following is NOT an example of indigenous law determinations?

- 1) The allocation or refusal of residential and agricultural land.
- 2) The permission or refusal of immigration or emigration.
- 3) The permission or refusal to gather natural products from communal land.
- 4) The allocation of date to families for burial purposes.

Answers:**Question 1**

The most accurate statement is (1). "Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people". This definition is found in Section 1 of the Recognition of Customary Marriages Act 120 of 1998.

Question 2

The most accurate statement is (3). The characteristic of customary law that is expressed as group versus individual orientation means that individuals function within the context of the group to which they belong.

Question 3

The most accurate statement is (1). The section in the Constitution of South Africa that does not signify recognition of customary law is Section 2.

Question 4

The most accurate statement is (1).

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The most accurate statement is (2). The group may approach the Premier of their province to make the appointment.

Question 6

The most accurate statement is (2).

Question 7

The most accurate statement is (4). Section 4(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 lists 12 functions of traditional councils.

Question 8

The most accurate statement is (1). The conflict between customary law norms and provisions of fundamental rights outlawing discrimination is not specifically resolved by the Constitution.

Question 9

The most accurate statement is (4). The effect of the decision taken in the Moseneke case was that between 2002 and 2004, an intestate estate of a black person reported to the Master was administered in terms of common law.

Question 10

The most accurate statement is (2). Ukuvusa custom may be applied if an unmarried male dies.

Question 11

The most accurate statement is (2). The Recognition of Customary Marriages Act 120 of 1998 recognizes polygynous marriages, defined as a man marrying more than one woman.

Question 12

The most accurate statement is (3). Indigenous African people observe legal rules and most rules for living, due to factors such as public opinion and the fear of punishment.

Question 13

The most accurate statement is (2). Specialised and unspecialised systems are similar because the relations governed by law are the same.

Question 14

The most accurate statement is (4). Rank influenced a person's status in customary law.

Question 15

The most accurate statement is (1). A customary marriage can only be dissolved on the ground of the irretrievable breakdown of the marriage.

Question 16

The most accurate statement is (3). Labour Courts are not recognised in terms of the Constitution to apply indigenous law in South Africa.

Question 17

The most accurate statement is (1). In the case of *Bhe and Others v Magistrate, Khayelitsha, and Others* (Commission for Gender Equality as Amicus Curiae) 2005 (1) BCLR 1 (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated thereunder to be unconstitutional and invalid because the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour.

Question 18

The most accurate statement is (4).

Question 19

The most accurate statement is (3). Succession to traditional leadership in African customary law is a hereditary system, which follows the patriineage.

Question 20

The most accurate statement is (4). The permission or refusal to gather natural products from communal land is an example of a traditional leader's determinations in indigenous law.

2017**Question 1**

Specialised and unspecialised systems are different because in the unspecialised systems

- 1) emphasis falls strongly on the group.
- 2) a transgression of the law and legal rules will have certain, specific consequences for the transgressors
- 3) relations are governed by law
- 4) decisions are only taken by the family head.

Question 2

One of the indications that fundamental rights have priority over customary law is that the...

- 1) rights in the Bill of Rights may be limited by any law.
- 2) courts must promote the values that underlie an undemocratic society.
- 3) Bill of Rights is only applicable to customary law.
- 4) Constitution is the supreme law.

Question 3

The betrothal agreement...

- 1) is an enforceable contract in customary law.
- 2) cannot be repudiated or terminated at any time.
- 3) gives rise to a claim for breach of contract, in cases where it is terminated.
- 4) creates certain rights and duties for the parties involved.

Question 4

In customary law, succession

- 1) takes place on the death of the principal wife.
- 2) follows the principle of primogeniture.
- 3) is a duty that cannot be relinquished or ceded.
- 4) prevents a family head from transferring a younger son from one house to another house without a son during his lifetime.

Question 5

A woman in customary law...

- 1) may never inherit property from her deceased father.
- 2) has equal status and capacity with her husband in a customary marriage.
- 3) cannot acquire and dispose of assets if she is a wife in a customary marriage.
- 4) can succeed to the position of family head at her husband's discretion.

Question 6

Which of the following statements apply to the ukutheleka custom?

- 1) It is practised by some Sotho tribes

- 2) It entails that the wife is “kidnapped” by her people
- 3) It is used for the maintenance of the woman
- 4) It means that the lobolo is delivered in instalments.

Question 7

Section 211(3) of the 1996 Constitution has the following implications: 1) The recognition and application of customary law is subject to the Bill of Rights. 2) All courts may apply and must recognise customary law. 3) It is not necessary for judges to have any formal training in customary law. 4) The recognition and application of customary law is subject to general legislation.

Question 8

In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, the power to appoint a king vests with...

- 1) the president.
- 2) the premiers of the different provinces.
- 3) the National House of Traditional Leaders.
- 4) parliament.

Question 9

The ukungena custom is applied where...

- 1) the husband is incapable of having children.
- 2) the husband dies without a son .
- 3) the tribal wife dies without a son.
- 4) the tribal wife is incapable of having children.

Question 10

Which of the following will the Premier of a province engage in to recognise a senior traditional leader, headman or headwoman?

- 1) issue a notice in the provincial gazette recognising the person so

identified

- 2) call a tribal council meeting to announce the appointment.
- 3) appoint the particular traditional leader to the relevant House of Traditional leaders.
- 4) organise a celebration of the appointment in the community.

Question 11

The concrete versus the abstract approach that is characteristic of customary law means that...

- 1) While specialised legal systems adopt the abstract approach, unspecialised legal systems are more concrete, real and visible in approach.
- 2) Specialized legal systems are marked by visible acts such as signing of a marriage register to signify the conclusion of a marriage contract.
- 3) In specialised legal systems, performance or part performance is required in the formulation of contracts.
- 4) proof for adultery in specialised legal systems was obtained by catching the culprit in the act and taking some of his personal belongings.

Question 12

The right to culture that is protected under section 30 and 31 of the Constitution implies that the state must...

- 1) force all courts to apply and therefore recognise customary law
- 2) ensure that the recognition of customary law is subject to the Bill of Rights
- 3) preserve the existence and identity of cultural groups
- 4) determine and pass legislation that is specifically applicable to customary law

Question 13

In terms of the court's decision in the case of *Shilubana v Nnamitwa* ...

- 1) traditional authorities may update and change customary law to fit in with the living customary law.
- 2) traditional communities may develop customary law in accordance with norms and values of the Constitution
- 3) traditional authorities should always align and develop customary law in accordance with norms and values of the Constitution.
- 4) traditional authorities should make sure that customary law is aligned with gender considerations.

Question 14

"Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people". This definition is found in.....

- 1) Section 1 of the Recognition of Customary Marriages Act 120 of 1998.
- 2) Section 1 of the Traditional Leadership and Governance Framework Act 41 of 2003.
- 3) Section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009.
- 4) Section 1 of the Black Administration Act 38 of 1927

Question 15

One of the following sections in the Constitution of South Africa does not signify recognition of customary law. Which one is it?

- 1) Section 2
- 2) Section 15
- 3) Section 31
- 4) Section 112

Question 16

The..... has the authority to recognise a traditional community in terms of the law.

- 1) President of the Republic of South Africa
- 2) provincial house of traditional leaders
- 3) Premier of a province under which the community falls
- 4) King or queen under whose authority the community falls.

Question 17

The conflict between customary law norms and provisions of fundamental rights outlawing discrimination.....

- 1) is not specifically resolved by the Constitution
- 2) is directly regulated by section 2 and 36(i) of the Constitution
- 3) is directly regulated by 5(8)(i) of the Constitution
- 4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

Question 18

Prior to 5 December 2002, intestate estates of black persons were administered by the

- 1) magistrate's court.
- 2) tribal court.
- 3) chief's court.
- 4) High Court.

Question 19

In the Moseneke decision, the provisions of section 23(7) of the Black Administration Act were allowed to be followed for only ...

- 1) 1 year.
- 2) 2 years.

3) 3 years.

4) 4 years.

Question 20

A customary marriage can only be dissolved ...

- 1) on the ground of irretrievable breakdown of the marriage.
- 2) by a family court, or a competent division of the High court or a divorce court or an equality court.
- 3) by the death of one of the spouses.
- 4) if the court is satisfied that one of the parties has committed adultery resulting to the birth of a child.

ANSWERS:

Question 1

The most accurate statement is (1). In unspecialised legal systems, emphasis falls strongly on the group rather than on the individual. The individual functions entirely within the context of the group. In specialised legal system, the emphasis falls very strongly on the individual.

Question 2

The most accurate statement is (4). The supremacy of the constitution as provided for in section 2 indicates that customary law may not be opposed to the provisions of the constitution that includes the fundamental rights protected under the constitution.

Question 3

The most accurate statement is (4). A betrothal agreement creates certain rights and duties for the parties involved in African customary law.

Question 4

The most accurate statement is (3). In customary law, succession follows

the principle of male primogeniture. Therefore, the most correct statement is that succession in customary law is a duty that cannot be relinquished or ceded.

Question 5

The most accurate statement is (2). In terms of section 6 of Act 120 of 1998 a wife in customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity to acquire and dispose of assets and to enter into contracts and litigate.

Question 6

The most accurate statement is (4). The ukutheleka custom is found among some South Nguni, whereby the marriage goods are delivered in “instalments” after the wife has been transferred to her husband group. Please note that the word “kidnapped” as used in option 2 has some criminal connotation and has no place in African customary practices.

Question 7

The most accurate statement is (2).

Question 8

The most accurate statement is (1). See section 9 of the Traditional Leadership and Governance Framework Act 41 of 2003.

Question 9

The most accurate statement is (2). The ukungena custom applies where a husband died without a son and the younger brother or a male relative of the deceased takes over the widow to produce a son who will carry on the family name of the deceased husband.

Question 10

The most accurate statement is (1). See section 11 of the Traditional Leadership and Governance Framework Act 41 of 2003.

Question 11

The most accurate statement is (1). The concrete versus the abstract approach that is characteristic of customary law means that while specialized legal systems adopt the abstract approach, unspecialized legal systems are more concrete, real and visible in approach.

Question 12

The most accurate statement is (3). The right to culture that is protected under section 30 and 31 of the Constitution implies that the state must preserve the existence and identity of cultural groups.

Question 13

The most accurate statement is (2). In terms of the court's decision in the case of *Shilubana v Nwamitwa* traditional communities may develop customary law in accordance with norms and values of the Constitution.

Question 14

The most accurate statement is (1). See section 1 of Act 120 of 1998.

Question 15

The most accurate statement is (4).

Question 16

The most accurate statement is (3). The Premier of a province under which the community falls has the authority to recognise a traditional community in terms of the law.

Question 17

The most accurate statement is (1). The conflict between customary law norms and provisions of fundamental rights outlawing discrimination is not specifically resolved by the Constitution.

Question 18

The most accurate statement is (1). Prior to 5 December 2002, intestate estates of black persons were administered by the magistrate's court.

Question 19

The most accurate statement is (1). In the Moseneke decision, the provisions of section 23(7) of the Black Administration Act were allowed to be followed for only 1 year.

Question 20

The most accurate statement is (1). In terms of the Recognition of Customary Marriages Act, the customary marriage can only be dissolved on the ground of irretrievable breakdown of the marriage.

2018**QUESTION 1**

One of the indications that fundamental rights have priority over customary law is that the...

- 1) rights in the Bill of Rights may be limited by any law.
- 2) courts must promote the values that underlie an undemocratic society.
- 3) Bill of Rights is only applicable to customary law.
- 4) Constitution is the supreme law.

QUESTION 2

Specialized and unspecialized systems are different because in the unspecialized systems.....

- 1) emphasis falls strongly on the group
- 2) a transgression of the law and legal rules will have certain, specific consequences for the transgressors
- 3) relations are governed by law
- 4) decisions are only taken by the family head.

QUESTION 3

Which of the following factors influenced a person's status in customary law?

- 1) wealth
- 2) class
- 3) popularity
- 4) rank

QUESTION 4

The traditional indigenous marriage.....

- 1) was dissolved by the husband and wife as individuals
- 2) could only be dissolved by a court of law
- 3) resulted in the establishment of a new house estate
- 4) could only be concluded between individuals who were majors

QUESTION 5

Which of the following statement is **NOT** applicable where either of the prospective spouses to a customary marriage is a minor?

- 1) both his or her parents or if he or she has no parents, his or her legal guardian must consent to the marriage
- 2) the commissioner of child welfare may grant consent to the marriage if the consent of the parent or guardian cannot be obtained
- 3) the commissioner of child welfare may give consent even if either of the parents or guardian refuses to grant consent
- 4) the Minister of Home Affairs may grant written permission to conclude the marriage

QUESTION 6

A woman in customary law...

- 1) may never inherit property from her deceased father.
- 2) has equal status and capacity with her husband in a customary

marriage.

- 3) cannot acquire and dispose of assets if she is a wife in a customary marriage.
- 4) can succeed to the position of family head at her husband's discretion.

QUESTION 7

Which of the following statements apply to the *ukutheleka* custom?

- 1) It is practised by all Sotho tribes
- 2) It entails that the wife is "kidnapped" by her people
- 3) It is used for the maintenance of the woman
- 4) It means that the *lobolo* is delivered in instalments.

QUESTION 8

Section 211(3) of the 1996 Constitution has the following implications:

- 1) The recognition and application of customary law is subject to the Bill of Rights.
- 2) All courts may apply and must recognise customary law.
- 3) It is not necessary for judges to have any formal training in customary law.
- 4) The recognition and application of customary law is subject to general legislation.

QUESTION 9

In customary law, house property.....

- 1) belongs to a particular house under the household as a whole.
- 2) is unilaterally controlled by the family head.
- 3) includes property of the family head's mother's house to which he has succeeded.

4) may be defined as property that belongs to a person who has acquired it, although it may be under the control of the family head.

QUESTION 10

In the case of *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae)* 2005 (1) BCLR 1 (CC), the court declared the whole of section 23 of the Black Administration Act 38 of 1927 and the regulations promulgated thereunder to be unconstitutional and invalid because.....

- 1) the Act was manifestly racist in its purpose and effect because it discriminated on the grounds of race and colour
- 2) the combined effect of section 23 and the regulations was to put in place a succession scheme which discriminated on the basis of race and colour applying only to white people
- 3) the discrimination it perpetrated was an affront to the dignity of white persons.
- 4) it was inconsistent with the right to life guaranteed in section 11 of the Constitution

QUESTION 11

The following are some of the main principles of the customary law court.

- 1) Only adult males are free to attend the court sessions
- 2) The sessions of indigenous courts are held in private.
- 3) All parties must be represented during trials.
- 4) The onus is on the accused to prove his innocence in court

QUESTION 12

What purpose is the fine for contempt of court is used for in customary law.

- 1) The maintenance of the messengers.
- 2) Payment of the salary of the traditional council members.

- 3) As an offering to the ancestors.
- 4) Compensation to the court for the time its members spent on the case.

QUESTION 13

Which of the following are some of the known presumptions in indigenous law?

- 1) The children of a married woman are the children of her husband.
- 2) An adult is insane, until there is evidence to the contrary.
- 3) A person may voluntarily entrust pieces of personal clothing to a stranger.
- 4) A person may voluntarily lie prostrate to be hit at the back.

QUESTION 14

Which of the following persons are competent to testify in indigenous law:

- 1) only the parties to the trial
- 2) only children above the age of puberty
- 3) a co-accused for or against one another
- 4) an intoxicated person

QUESTION 15

The difference between a crime and a delict is that.....

- 1) In a crime the community is harmed, whereas in a delict individuals or agnatic group is harmed.
- 2) In a crime the individuals are harmed, whereas in a delict the community is harmed.
- 3) In a crime the property of an individual or group is affected whereas in a delict public property is affected.
- 4) A crime is punishable by community service whereas a delict is

punishable by solitary confinement.

QUESTION 16

Which of the following statements is true in respect of punishment that a traditional leader may impose?

- 1) He may impose a sentence which entails death.
- 2) He may impose a fine of R400.
- 3) He may not impose corporal punishment.
- 4) He may impose a prison sentence.

QUESTION 17

Which of the following is an element of a crime in customary law ?

- 1) The act must be performed in broad daylight.
- 2) The act must be unlawful.
- 3) The act must be performed by several people against one person.
- 4) The act must be against cultural institutional actions.

QUESTION 18

In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, the power to appoint a king vests with the.....

- 1) president.
- 2) premiers of the different provinces.
- 3) National House of Traditional Leaders.
- 4) parliament.

QUESTION 19

The *ukungena* custom is applied where the.....

- 1) husband is incapable of having children.
- 2) husband dies without a son .

- 3) tribal wife dies without a son.
- 4) tribal wife is incapable of having children.

QUESTION 20

Which of the following will the Premier of a province engage in to recognise a senior traditional leader, headman or headwoman?

- 1) issue a notice in the provincial gazette recognising the person so identified
- 2) call a tribal council meeting to announce the appointment.
- 3) appoint the particular traditional leader to the relevant House of Traditional leaders.
- 4) organise a celebration of the appointment in the community.

ANSWERS:**Question 1**

The most accurate statement is (4). Section 8 (1) of the Constitution indicates that the Bill of Rights applies to all law, including customary law.

Question 2

The most accurate statement is (1). In unspecialised legal systems, emphasis falls strongly on the group rather than on the individual. The individual functions entirely within the context of the group. In specialised legal system, the emphasis falls very strongly on the individual.

Question 3

The most accurate statement is (4). Rank plays a significant role in customary law and is one factor that may influence a person's status.

Question 4

The most accurate statement is (3). One of the general consequences of the traditional indigenous marriage is that a new and separate unit,

namely family or house, comes into being.

Question 5

The most accurate statement is (3). The commissioner is not entitled to give consent if either of the parents or guardian refuses to grant consent.

Question 6

The most accurate statement is (2). In terms of section 6 of Act 120 of 1998 a wife in customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity to acquire and dispose of assets and to enter into contracts and litigate.

Question 7

The most accurate statement is (4). The *ukuthleleka* custom is found among some South Nguni, whereby the marriage goods are delivered in “instalments” after the wife has been transferred to her husband group. Please note that the word “kidnapped” as used in option 2 has some criminal connotation and has no place in African customary practices.

Question 8

The most accurate statement is (1).

Question 9

The most accurate statement is (1). Please note that although the property is controlled by the family head he does not unilaterally make decisions but do in consultation with the wife or the family.

Question 10

The most accurate statement is (1)

Question 11

The most accurate statement is (4).

Question 12

The most accurate statement is (1).

Question 13

The most accurate statement is (1). Because the man pays *lobolo* the general presumption is that the children of a married woman are the children of her husband.

Question 14

The most accurate statement is (3). Co-accused persons may testify for or against one another. The general principle is that all sane persons including children, so long they can remember and relate an incident, they can testify in court.

Question 15

The most accurate statement is (1)

Question 16

The most accurate statement is (3).

Question 17

The most accurate statement is (2).

Question 18

The most accurate statement is (1). See section 9 of the Traditional Leadership and Governance Framework Act 41 of 2003.

Question 19

The most accurate statement is (2). The *ukungena* custom applies where a husband died without a son and the younger brother or a male relative of the deceased takes over the widow to produce a son who will carry on the family name of the deceased husband.

Question 20

The most accurate statement is (1). See section 11 of the Traditional Leadership and Governance Framework Act 41 of 2003.

2018**Question 1**

“Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people”. This definition is found in

- 1) Section 1 of the Recognition of Customary Marriages Act 120 of 1998.
- 2) Section 1 of the Traditional Leadership and Governance Framework Act 41 of 2003.
- 3) Section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009.
- 4) Section 1 of the Black Administration Act 38 of 1927.

Question 2

The characteristic of customary law that is expressed as group versus individual orientation means that...

- 1) emphasis of the law is placed on the parties concerned in a dispute
- 2) although the family head was nominally the owner of the family property, he was not liable for debts of the other members of the family home
- 3) individuals function within the context of the group to which they belong
- 4) the rights emanating from the seduction of a girl could only be claimed from the perpetrator by herself to the exclusion of family members

Question 3

One of the following sections in the Constitution of South Africa does not signify recognition of customary law. Which one is it?

- 1) Section 2

- 2) Section 15
- 3) Section 31
- 4) Section 112

Question 4

Which of the following are some of the known presumptions in indigenous law?

- 1) The children of a married woman are the children of her husband.
- 2) An adult is insane until there is evidence to the contrary.
- 3) A person may voluntarily entrust pieces of personal clothing to a stranger.
- 4) A person may voluntarily lie prostrate to be hit at the back.

Question 5

The group has identified a leader amongst them and wish to appoint him as a senior traditional leader in their new community. Whom can they approach to make the appointment?

- 1) The President of South Africa.
- 2) The Premier of their Province.
- 3) The Provincial House of Traditional Leaders
- 4) The National House of Traditional Leaders.

Question 6

Which statement illustrates some of the steps that need to be taken by the appointing authority in effecting the appointment?

- 1) Notify the previous traditional leader of the intention to recognise and appoint the new leader.
- 2) Publish the appointment in the *Government Gazette*.

- 3) Notify the National House of Traditional leaders.
- 4) Send a copy of the letter of appointment to the office of the President of the Republic of South Africa.

Question 7

Section 4(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 lists functions of traditional councils.

- 1) 2
- 2) 4
- 3) 8
- 4) 12

Question 8

The conflict between customary law norms and provisions of fundamental rights outlawing discrimination....

- 1) is not specifically resolved by the Constitution
- 2) is directly regulated by section 2 and 36(i) of the Constitution
- 3) is directly regulated by section 5(8)(i) of the Constitution
- 4) is specifically resolved by the provisions of section 8 and 39(i) of the Constitution

Question 9

The effect of the decision taken in the *Moseneke* case was that between 2002 and 2004, an intestate estate of a black person reported to the Master was administered in terms of ...

- 1) customary law.
- 2) native law.
- 3) zulu code.
- 4) common law.

Question 10

Ukuvusa custom may be applied if ...

- 1) a married man dies childless.
- 2) an unmarried male dies.
- 3) a female dies childless.
- 4) the wife cannot bear children.

Question 11

The Recognition of Customary Marriages Act 120 of 1998 recognizes polygynous marriages, defined as

- 1) a woman marrying more than one man.
- 2) a man marrying more than one woman.
- 3) a woman marrying another woman.
- 4) a man marrying not more than one woman.

Question 12

Indigenous African people observe legal rules and most rules for living, due to factors such as ...

- 1) faithfulness to Christian values.
- 2) fear of law-enforcing organs such as the police.
- 3) public opinion and the fear of punishment.
- 4) the availability of courts and judges.

Question 13

Specialised and unspecialised systems are similar because ...

- 1) emphasis falls strongly on the group.
- 2) the relations governed by law are the same.
- 3) concrete evidence is very important.

- 4) law originates with the ancestors.

Question 14

In terms of the Recognition of Customary Marriages Act 120 of 1998....

- 1) Marriages not registered in terms of the Act are void
- 2) Parties to an unregistered customary marriage are liable to a fine.
- 3) Unregistered marriages are awarded the status of a union.
- 4) Customary marriages are not invalid for failure to register them.

Question 15

A customary marriage can only be dissolved ...

- 1) on the ground of the irretrievable breakdown of the marriage.
- 2) a family court, or a competent division of the High court or a divorce court, or an equality court.
- 3) by the death of one of the spouses.
- 4) if the court is satisfied that one of the parties has committed adultery resulting to the birth of a child.

Question 16

Which of the following courts are **NOT** recognised in terms of the Constitution to apply indigenous law in

South Africa?

- 1) Courts of Traditional leaders
- 2) Magistrate courts
- 3) Labour Courts
- 4) The Supreme court

Question 17

In terms of the court's decision in the case of ***Shilubana v Nnamitwa*** ...

- 1) traditional authorities may update and change customary law to fit in with the living customary law.
- 2) traditional communities may develop customary law in accordance with norms and values of the Constitution
- 3) traditional authorities should always align and develop customary law in accordance with norms and values of the Constitution.
- 4) traditional authorities should make sure that customary law is aligned with gender considerations.

Question 18

The following are some of the main principles of the customary law court.

- 1) Only adult males are free to attend the court sessions.
- 2) The sessions of indigenous courts are held in private.
- 3) All parties must be represented during trials.
- 4) The onus is on the accused to prove his innocence in court.

Question 19

Succession to traditional leadership in African customary law...

- 1) follows the principle of primogeniture.
- 2) is gender neutral.
- 3) is a hereditary system which follows the patrilineage.
- 4) only happens where the traditional leader dies without brothers.

Question 20

Which of the following is NOT an example of indigenous law determinations?

- 1) The allocation or refusal of residential and agricultural land.
- 2) The permission or refusal of immigration or emigration.
- 3) The permission or refusal to gather natural products from communal

land.

4) The allocation of date to families for burial purposes.

Answers:

Question 1

The most accurate statement is (1). *“Customary law means the customs and usages traditionally observed among indigenous African peoples of South Africa and which form part of the culture of those people”*. This definition is found in Section 1 of the Recognition of Customary Marriages Act 120 of 1998.

Question 2

The most accurate statement is (3). The characteristic of customary law that is expressed as group versus individual orientation means that individuals function within the context of the group to which they belong.

Question 3

The most accurate statement is (1). The section in the Constitution of South Africa that does not signify recognition of customary law is Section 2.

Question 4

The most accurate statement is (1).

Question 5

The most accurate statement is (2). The group may approach the Premier of their province to make the appointment.

Question 6

The most accurate statement is (2).

Question 7

The most accurate statement is (4). Section 4(1) of the Traditional

Leadership and Governance Framework Act 41 of 2003 lists 12 functions of traditional councils.

Question 8

The most accurate statement is (1). The conflict between customary law norms and provisions of fundamental rights outlawing discrimination is not specifically resolved by the Constitution.

Question 9

The most accurate statement is (4). The effect of the decision taken in the *Moseneke* case was that between 2002 and 2004, an intestate estate of a black person reported to the Master was administered in terms of common law.

Question 10

The most accurate statement is (2). *Ukuvusa* custom may be applied if an unmarried male dies.

Question 11

The most accurate statement is (2). The Recognition of Customary Marriages Act 120 of 1998 recognizes polygynous marriages, defined as a man marrying more than one woman.

Question 12

The most accurate statement is (3). Indigenous African people observe legal rules and most rules for living, due to factors such as public opinion and the fear of punishment.

Question 13

The most accurate statement is (2). Specialised and unspecialised systems are similar because the relations governed by law are the same.

Question 14

The most accurate statement is (4). Rank influenced a person's status in customary law.

Question 15

The most accurate statement is (1). A customary marriage can only be dissolved on the ground of the irretrievable breakdown of the marriage.

Question 16

The most accurate statement is (3). Labour Courts are not recognised in terms of the Constitution to apply indigenous law in South Africa.

Question 17

The most accurate statement is (4). In terms of the court decision in the case of *Shilubana v Nwamitwa*, traditional authorities should make sure that customary law is aligned with gender considerations.

Question 18

The most accurate statement is (4). See pages 117-119 in your study guide for the main principles of court procedure.

Question 19

The most accurate statement is (3). Succession to traditional leadership in African customary law is a hereditary system which follows the patriineage.

Question 20

The most accurate statement is (4). The allocation of date to families for burial permission is not an example of a traditional leader's determinations in indigenous law.