



**LAW SOCIETY**  
OF SOUTH AFRICA

## **LEARNING OUTCOMES**

### **Customary Law**

#### *Chapter 1 The Nature and Application of Customary Law*

- ❖ *Legislation and case law*
- ❖ *Custom*
- ❖ *Culture*
- ❖ *Living Customary Law*
- ❖ *Indigenous Africa Peoples*
- ❖ *Personal Application*
- ❖ *Territoriality*
- ❖ *Culture*
- ❖ *Ubuntu*
- ❖ *Constitutional conditions*
- ❖ *Specialized vis-à-vis unspecialized legal system*
- ❖ *Sources of Customary Law*

#### *Chapter 2 The Social Structure of Indigenous Communities (Tribes)*

- ❖ *The system of relationship*
- ❖ *The system of kinship*
- ❖ *The social composition*
  - ✓ *The household (lapa)*
  - ✓ *The family group (lesika)*
  - ✓ *The ward (kgorwana)*
  - ✓ *Sections (kgoro)*
  - ✓ *The community (tribe) morafe*
- ❖ *The present social structure*
- ❖ *The legal significance of social structures*
- ❖ *Religion*

### *Chapter 3 - Contracts*

- ❖ *General Principles*
  - ✓ Agreement
  - ✓ Possibility of performance
  - ✓ Lawfulness
  - ✓ Formalities
  - ✓ Performance creates liability
  - ✓ Terms of Agreement
  - ✓ Remedies for failure to perform
  - ✓ Termination of Agreement
  - ✓ The parties
- ❖ *Specific contracts*
  - ✓ Exchange
  - ✓ Purchase and sale
  - ✓ Gifts
  - ✓ Employment
  - ✓ Independent service
  - ✓ Traditional Health Practitioners
  - ✓ Specific contracts peculiar to African societies Farming out (Mafisa)

### *Chapter 4 Delicts*

- ❖ *Intent and negligence*
- ❖ *The liability of the family head*
- ❖ *Women as family heads*
- ❖ *Prescription*
  - ✓ Specific delicts
  - ✓ Defamation
  - ✓ Assault
  - ✓ Rape
  - ✓ Homicide
  - ✓ Seduction of an unmarried girl
  - ✓ Adultery
  - ✓ Trespass
  - ✓ Disobedience to traditional authority
  - ✓ Negligent causation of the death of a breadwinner

## Chapter 5 Traditional Authority Courts

- ❖ *Meaning of 'court'*
- ❖ *South African courts that may apply indigenous law*
  - ✓ Introduction
  - ✓ Small claims courts
  - ✓ Civil courts of traditional leaders
  - ✓ Criminal courts of traditional leaders
  - ✓ Courts of ward heads
  - ✓ Procedure and evidence in courts of traditional leaders
  - ✓ Introduction
  - ✓ Lodgement procedure
  - ✓ Trial procedure
  - ✓ Record of proceedings
  - ✓ Enforcement of judgement
  - ✓ Appeals
  - ✓ Evidence
  - ✓ Merits of traditional courts procedure and evidence
  - ✓ Constitutionality of the rules of traditional leaders' courts
  - ✓ Evaluation of courts of traditional leaders
  - ✓ Magistrate's courts
  - ✓ Family courts
  - ✓ High Court
  - ✓ Constitutional Court
- ❖ *Informal dispute-settlement forums*
  - ✓ Makgotla (community courts)
  - ✓ People's courts

## Chapter 6 Succession and Inheritance

- ❖ *Inheritance*
- ❖ *Succession to status*
- ❖ *Succession to traditional leaders*
- ❖ *The Reform of the Indigenous Law of Succession and Related Matters Act, 11 of 2009*
- ❖ *Women to women marriages*
- ❖ *The determination of a child's share*
- ❖ *The administration of estates*

## Chapter 7 Traditional Leadership and Governance

- ❖ *Features of modern and traditional government*
- ❖ *Notion of tradition*
- ❖ *Transformations of the institution of traditional leadership*
  - ✓ Pre-colonial phase
  - ✓ Traditional government under colonial influence

- ✓ Democratic government
- ❖ *Traditional leadership under the South African Constitution*
  - ✓ Institution of traditional leadership
  - ✓ Traditional leadership and issues of discrimination
- ❖ *Authority system*
  - ✓ Introduction
  - ✓ Central community authority (traditional community leader-in council)
  - ✓ Traditional leader
  - ✓ Bodies advising the traditional leader
- ❖ *Recognition and functions of traditional leaders*
  - ✓ Government intervention – indirect rule
  - ✓ Black Administration Act 38 of 1927
  - ✓ Powers, functions and duties
  - ✓ Apartheid era
  - ✓ Homeland phase
  - ✓ Constitutional recognition
  - ✓ White Paper on Traditional Leadership and Governance
  - ✓ Traditional Leadership and Governance Framework
    - *Traditional communities*
    - *Recognition of kingships and queenships*
    - *Recognition of principal traditional communities*
    - *Establishment and recognition of traditional councils*
    - *Establishment and recognition of kingship and queenship councils*
    - *Establishment and recognition of principal traditional councils*
    - *Functions of Traditional councils*
    - *Functions of kingship or queenship councils*
    - *Functions of principal traditional councils*
    - *Recognition of traditional leadership positions*
    - *Houses of traditional leaders*
    - *Roles and functions of traditional leadership*
    - *Dispute and claim resolutions and Commission on Traditional Leadership Disputes*
    - *Commission*
- ❖ *Code of Conduct*
- ❖ *Conclusion*

### *Chapter 8 Communal Land Tenure*

- ❖ *Objects of this chapter*
- ❖ *The nature of communal land tenure*
- ❖ *Senior traditional leaders' role*
- ❖ *Colonial and apartheid land tenure administration*
- ❖ *The homeland era*
- ❖ *The basic legislative network*
  - ✓ Introduction

- ✓ Underlying considerations
- ✓ The Glen Grey Act 1894
- ✓ The Natives Land Act 1913
- ✓ The Development Trust and Land Act 1936
- ✓ The Black Land Regulations R188 of 1969
- ✓ Ingonyama Trust Land in KwaZulu-Natal
- ❖ *Disintegration of administrative system*
- ❖ *Land tenure reform*
- ❖ *Conclusion*

### *Chapter 9 Customary Marriages*

- ❖ *Prior to the Recognition of Customary Marriages Act*
  - ✓ Introduction
  - ✓ Basic tenets
  - ✓ Preliminary requirements
  - ✓ Conclusion of the marriage
  - ✓ The legal consequence of a customary marriage
  - ✓ Dissolution of customary marriages
  - ✓ Dissolution on the death of the wife
  - ✓ Dissolution on the death of the husband
- ❖ *Customary Marriages after the Recognition of the Customary Marriages Act, 120 of 1998*
  - ✓ Introduction
  - ✓ The requirements
  - ✓ Marriages contracted after 15 November 2000
  - ✓ Bogadi
  - ✓ Customary jointly with civil marriages
  - ✓ Customary marriages
  - ✓ Prohibited degrees of affinity
  - ✓ Age of majority
  - ✓ Registration of customary marriages
  - ✓ Proof of existence of a customary marriage
  - ✓ Equal status and capacity of the spouses
  - ✓ Proprietary consequences
  - ✓ Dissolution of divorce
  - ✓ Competence to institute action
  - ✓ The patrimonial consequences of divorce
  - ✓ The interest of the children on divorce
  - ✓ Maintenance\
  - ✓ Dissolution of customary marriage by death of one of the spouses
  - ✓ Civil marriages