

## Nature Law Section

5 Questions to be set, of which 3 must be answered

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1. Give a definition of law & trace the development of the idea of law with a view to showing when & how customary law came to be recognised in jurisprudence.  
(EITHER (A))
2. Discuss the phrases "general principles of humanity" & "natural justice" and show in what senses & for what purposes they have been & are still used in our Union legislation & by Union Courts.  
(OR (B))
3. Give a definition of "sanction"; classify the sanctions of customary law, with examples.
4. Show to what extent the divisions of customary law are analogous with the divisions of modern law. Explain where & why differences occur.  
(OR (B))
5. "In reviewing the findings of a native court  
"a nice discrimination is often required  
"between unnecessary interference with  
"native custom on the one hand & the violation  
"of natural justice on the other" (Lugard's Dual Mandate).  
Discuss this proposition in the light of South African conditions.

6. Compare the legal position in Natal <sup>Zululand</sup> with that in the Transkeian <sup>Reserves</sup> in respect of  
(a) Kral head authority  
(b) Kral head responsibility.

7. Discuss the legal status of Native women in the Union

8. Show in what way "customary union" differs from "marriage" under the Native Administration Act (No. 38 of 1927). Give your views on the proposition that a customary union should be included in the definition of "marriage" under the Act, & show what its effect would be on Christian or civil marriages.

9. What are the essentials of customary unions as required in the courts of  
(a) Transkeian Reserves  
(b) Natal & Zululand

In what way do they differ from those in true Bantu customary law.

10. Compare the grounds for divorce of customary unions in the Transkeian <sup>Reserves</sup> Natal & Zululand. ~~What~~

11. ~~What are~~ Explain the legal requirements for the marriages of Natives to civil

11. Specify the legal effects of the ukhulobolo custom.

12. Answer one of the following questions :-

(a) Give a reasoned judgment on the following casus facts:-

(i) M, a Mpondo contracted a customary union in Pondoland with at least three women in the following order 1<sup>st</sup> N; 2<sup>nd</sup> O; 3<sup>rd</sup> P.

(ii) N bore several daughters all of whom with one exception died & there <sup>is</sup> ~~was~~ no male ~~heir~~ issue in her house.

(iii) R is the son of O and heir of that house

(iv) A is the son of P. and he asserts that when the union of M with P took place M publicly announced that P was not an ixtembe wife but was a "seed raiser" of the Great House even while the Great wife was still of child bearing age. A claims that he is <sup>the</sup> heir of the Great House.

In your judgment state

1. Which is the Great wife
2. Which is the Right Hand wife
3. Whether A's claim is sound.

or

(b) A, a Zulu chief, had several wives under Native custom, B and C being respectively the first and second wives. D the wife for

whom tribal cattle ~~was~~ were given, E and F were "ingadi" to B and C respectively. It appears that (i) A during his lifetime lobolo'd a wife for the son of B, with cattle belonging to the tribal property, & making a declaration on the day of the union that the cattle were a loan from ikhumbulu to ikhohlo

- (ii) B had three sons and one daughter
- (iii) C had no child
- (iv) F had two sons only
- (v) A during his lifetime allocated five head of cattle to F's house.

Under section of the Native Administration Act of 1927, the Native Commissioner found it necessary to institute an enquiry. Write a detailed report showing how the estate of A. should have been distributed.

3 out of 5

B. Administration Section

1. Write out a skeleton paragraph of the departmental organisation of the Native Affairs Department, explaining in particular the functions of the Native Affairs Commissioner in relation to the whole organisation.

2. Compare the powers of the Natal Code of 1932 in respect of the powers of the Supreme Chief with the powers of the Supreme Chief in Bantu Law.

3. Compare the <sup>United</sup> Transvaal Territories General Council with the Councils formed under the Native Affairs Act <sup>(2023)</sup> of 1920, & give your views on the possible future development of the Council system.

4. Describe <sup>briefly</sup> the various forms of Native land tenure & ~~suggest~~ indicate which forms are likely to be most beneficial to the Natives in future.

5. Lugard lays down two cardinal principles which must be followed in dealing with conquered land. Discuss these & show to what extent these principles have been followed in the <sup>South Africa</sup> ~~Transvaal~~ in respect of Native lands.

6. Give an account of the main <sup>What is the</sup> Native Development Account & how far is it able to meet its obligations. <sup>How should the funds for Native Education be obtained.</sup> ~~Make suggestions~~

+ ✓  
X  
6. Give an account of the origin, ~~present~~ nature & functions of the Native Development Account & make ~~any~~ suggestions regarding the financing of Native Education.

z  
x  
7. What are the <sup>legal requirements in</sup> provisions of the ~~Finance~~ <sup>Finance</sup> Act in respect of the marriage of Natives.

8. What are the main principles underlying the ~~Native~~ <sup>Native</sup> (Urban Areas Act) & ~~what~~ what are the principal difficulties in the way of the <sup>effective</sup> carrying out of these principles.

9. ✓  
X ✓  
9. What were the main recommendations of the Inter-departmental Committee on the Pass Laws (1919-1922). How far have they been carried into effect. ~~Make~~ What steps should be taken in regard to the pass laws.

# Native Affairs Dept

## Functions

1. Assist, guide protect re Native popul<sup>n</sup> (see app. A →)
2. Government of Native popul<sup>n</sup>
  - tribunals & courts
  - Land Tenure
  - { Agric develop
  - { Educ facilities
  - Local councils & work
  - Pass. Regs.
3. European & Non-European Relns
  - Legal or business
  - Economic. ~~Ag~~ Employment.
4. Native Estates
5. Taxation & other special laws.
6. General welfare.

A

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Law

Roman Dutch v. Combination

Chote v. Shephard

as manager

Inheritance

Shephard born - Oct 23/6/49

R/D Law abstracted

1850 Gov. a Supreme Chief

Chief as first rep's

Kaffrari -

Cathcart 1850 gave martial law in each step  
a law unto himself

1850 Law 4/1855

Shephard's aim Brookes p 51

# POLITICAL STATUS

CAPE HISTORY  
EFFECTS.

NATAL

TRANSVAAL

O.F.S.

← TREATY of VEREENIGING

NATIVE AFFAIRS COMMISSION 1905

NATIONAL CONVENTION

REPRESENTATION of NATIVES ACT.

EFFECTS

} of Continental Absolut.  
Traditions with  
British influence)  
English common  
Law & Roman  
Law  
Federalism → Democracy  
" → Absolute  
Monarchy

SUM UP - LEGAL + POLITICAL STATUS

# Summary

STATUS - Definition  
for tonight

Position as fixed by law which the native holds in relation to the legal and political organization of the State.

## LEGAL STATUS

POWERS of G.G. Act of Union # 135. 147.

- Powers of G.G. {
- (a) Powers of Governors pre-Union
  - (b) Section 1. Native Admin Act.
  - (c) Natal Code as amended  
Code as Test

Governor as British  
substitute for  
British Courts

Effects of Powers on Common Law Rights.

Service - military  
Discipline  
Comm. Resp  
No trial  
Munitions

What are powers of Chiefs?

Further powers of G.G.

It. Admin Act 24 Amend Code

25 Leg<sup>n</sup> in Native Areas

Combination of legislative, judicial & executive  
legal status of Natives affected by laws of

EMPHASIS on  
CONTROL

Control.

Why Control?

Historical.

## LAWS OF CONTROL

- I CONTROL OF MOVEMENTS { Pass Law by 426  
Urban Areas Act Entry.
- II " " LABOURERS { Mosham - strikes  
N.L. Recruitment  
Urban Areas Act
- III " " NATIVES ON FARMS { Symmetry Law  
Native Service Contract  
Land Act Shipping  
on 15 hours
- IV " " RESIDENCE IN URBAN AREAS { Urban Areas Act
- V " " CONDUCT { Penal Code Natal Code  
See 17. na. See 29  
Natives' Assent Act

EFFECTS OF ABOVE - { Voluntary  
Offences FIGURES

- VI RESTRICTION CONTROL OF PROPERTY/OWNERSHIP ~~FRANCHISE~~ Urban Areas Act Hand Act
- VII EXEMPTIONS { Cape Natal Swaz  
Tol + Natal - 150/1934

~~VIII~~ X. DEFENCE ACT - Exclusion from compulsory service - but possible (voluntary)

SUM UP

VIII LIMITATION of EMPLOYMENT mineworkers act  
Removal from jurisdiction of ordinary courts  
Common also Administrator

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