

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF HUMANITIES

COMMUNICATION AND STUDY SKILLS UNIT

ELG1311: COMMUNICATION AND ACADEMIC LITERACY FOR LAW (W & X)

JANUARY 2024

MARKS 100

TIME: 3 HOURS

INSTRUCTIONS:

- ANSWER ALL QUESTIONS
- PLEASE NOTE THAT THE PAPER HAS TWO SECTIONS
 - A – ESSAY WRITING
 - B – READING COMPREHENSION
- BEGIN EACH QUESTION ON A FRESH PAGE
- WRITE YOUR STUDENT NUMBER AND GROUP CLEARLY
- WRITE LEGIBLY

SECTION A: ESSAY WRITING

- 1) Read the passage below and write an **ARGUMENTATIVE ESSAY** of between one and half to two ($1\frac{1}{2}$ to 2) pages (excluding Bibliography) on the topic:

Should it be only the male child who can inherit land in Lesotho?

Note the following:

- Select relevant material from the given passages
- Include **one direct** and **more than one indirect** quotation in your essays
- Marks will be awarded for the following;

Appropriate content

Effective paragraphs

Relevant quotations

Correct grammar and spellings

Academic literacy style

QUESTION 1

ARGUMENTATIVE ESSAY

[60]

Passage 1

Sesotho Customary Law

For the sake of the paper will use Sesotho customary law marriage or customary law marriage interchangeably. It must also be pointed out at the beginning that Lesotho operates a dualist system consisting of the Sesotho customary law and Roman-Dutch law.

Capacity to Marry

Under Sesotho customary law, there was no prescribed age to reach maturity. In the case of males, once a person came from circumcision he was regarded as an adult. Females were regarded as perpetual minors “and so there was never a point in time when it could be said that they had attained maturity. The real issue was whether or not a female could procreate children. In other words, the point was simply that as long as she had reached a puberty stage she could marry.

Objectives of Customary Law of Inheritance

The two major objectives [sic] of Sesotho customary law of inheritance are [Firstly], to determine the identity of the person designated as heir (mojalefa), and secondly, to spell out and enforce his rights and responsibilities in relation to other members of the deceased’s family.

Identity of the Heir

The first objective of the customary inheritance is easily achieved as the law has already given guidelines as to how the heir will be identified. According to the Laws of Lerotoli the heir is the eldest male child in the event of more than one customary marriage, polygamous marriages[sic], each house’s estate will be administered [sic] by the eldest male child born to the respective wife widow. The eldest son in the first house will then be the universal heir.

Rights and Responsibilities of the Heir

That heir is expected to use the estate *lefa* in consultation with his father’s and to share that estate with his junior brothers. The heir does not have unfettered and absolute rights over the estate, he has obligations towards other members of the family, and in the interests of the family. An heir also has to settle the liabilities and take responsibility for the family.

As shown above, it is the first born male child who is entitled to succeed as the as an heir to the deceased’s estate and who IS expected to look after the widow and his brothers as well as his sisters and to give [sic] some share of the estate to the younger brothers, although it would seem that it does not matter how big the shares should be.

Source: Kuena, Maphathe. Inheritance Wars. Inheritance Laws Journal. 2006. Vol15, page 345 issue 4.

Passage 2

Women and Land

The Land Act 2010 modernised and administration and abolished customary land tenure. The 2010 Land Act strengthened women's property rights by providing for equal and joint land ownership for men and women, inclusion of women in land registration, and inheritance of property. (Government of Lesotho, 2010).

Customary law and/or practice governs 90% of the Basotho (Letuka, et.al. 1994). Customary Law which applies to most of the land in Lesotho institutionalises the subordination of women in Lesotho. Under customary law, land held under land tenure is allocated for free to married male members of a designated community for subsistence farming and to look after his family. Customary land inheritance follows the male lineage. Although not initially registered, customary land rights are recorded on a document known as Form C, which is issued by the traditional authority.

Why Land Inheritance Matters

For women across Africa Inheritance, the distribution of an individual's accumulated assets through generations is a critical mode property transfer in Sub-Saharan Africa (Kumar and Quisumbig, 2012). Inheritance is an economic and human rights issue. The distribution of immovable and movable assets affects various individual's economic trajectories (Ali et.al.2014). Inheritance may be an opportunity for property accumulation or undermine security of access to assets. (Cooper and Bird, 2012) Land inheritance issues high-light the vulnerability of women, land ownership and control and the social legitimacy and capacity of statutory and customary systems of governance (Cooper, 2012). The land-focused human rights agenda has increased the focus on land inheritance (Cotula, et.al. 2004). This is important as some land inheritance practices and property distribution practices discriminate against women and violate their human rights.

Source: GaynorGamuchirai Paradza. Women and Land Inheritance under Legal pluralism in Lesotho. Public Affairs Research Institute 2019.

Passage 3

Women's Access to Land to be Strengthened

Lesotho is among the 44 countries that are working to ensure that women have the same land rights as men. The country is working on land right restrictions that disregard a women's right to having full access to land. The bottlenecks include lack of practice and amendments that need to be finalized on the Inheritance Act to enable women to inherit their husbands' land without having to consult male family members. Advocate Libakiso Matlho from Women and Law in Southern Africa-Lesotho (WILSA) said the Land Act of 2010 gives equal land rights to all Basotho.

She said those also afforded rights to own land under this Act are children irrespective of their gender in a case where their parents want to pass it on to them. She said since March 2022, a new review on Land and Administration Estate Reclamation was being revised or reviewed to an extent that the will can be written by both partners whether married in customary or civil marriage, which used to be a problem in the past.

“There is another bill called the Laws of Lerotholi Amendments Bill of 2022 providing that widows no longer have to consult heirs or male relatives after the death of their spouses and can do whatever they want with their property. “This is a progressive response by law in the sense that widows will now have the same rights as widowers, in as far as inheritance is concerned,” she noted.

She further stated that the amendment bill has already passed before the lower House of Parliament and is yet to be presented in the Senate. Hopefully, the Upper House will approve it and it will be passed into a law providing full social and economic rights to widows. Adv. Matlho said the amendments further state that when the widow passes on, her heir (male child), will still inherit the estate as happens under customary law but in so inheriting he has to ensure that he uses the property or inheritance with the full collaboration of the remaining siblings.

Matlho stated that the amendment rectifies challenges where an heir would take absolute rights to the exclusion of his younger siblings. A case between Maoeng siblings is one of the cases that prove that Lesotho has gone a long way in protecting women’s land rights. The case: *Maoeng vs Maoeng* (01 November 2019) was before the Court of Appeal:

Appeal – Customary Law – The first appellant (a male) is the first-born son of the second house under Basotho customary law. The first respondent (a female) is the only surviving child from the first house. The deceased father of the first appellant and first respondent left behind land in both the first and second houses. The first appellant claimed that the land from the first house was left to him by the deceased under customary law and he had himself and his wife assigned the lease over the disputed land by Maseru City Council. The first respondent challenged the transfer to the first and second appellant alleging that the transfer was procured fraudulently.

She maintained the land was allocated to her by the family after the father’s death. The land had in the meantime been passed on to third parties by the first and second appellants. The court declared the first respondent to be the heir on the strength of the family nominating her. On appeal, the court confirmed the order setting aside the registration to both the first and second appellants and third parties and upholding the declaration of first respondent as heir to the disputed land.

Speaking at a press briefing from the UNCCD 15, the Conference of the Parties, a senior international consultant and former Vice Minister of Foreign Affairs of Costa Rica Loreno Aguilar, who now works for UNCCD, argued that without women’s access to land, there can be no equitable development.

“There can be no gender equality without access to land,” Aguilar said. She further noted that equitable land governance and land security tenure is critical to enabling land restoration efforts led by women.

Source: Internews' Earth Journalism Network. UNCCD Virtual Reporting Fellowship, a Journalism Fellowship. Mathatisi Sebusi Abidjan Côte d'Ivoire. Public Eye News. 2022.

SECTION B: READING COMPREHENSION

[40]

QUESTION 2

Read the following passage and answer the questions that follow.

Land Act 1979

Land Act 1979 is an act to **consolidate** and amend the law relating to land thus providing for - the grant of title to land; the conversion of titles to land; the declaration of selected development areas and selected agricultural areas and titles to land therein; the setting aside of land for use for public purposes; the establishment of a Land Tribunal; the grant of public servitudes; and for connected purposes.

The Act makes provision with respect to titles in land, the development of selected land, and the resolution of disputes regarding land and various other matters relating to land. As a corollary to the principle that land in Lesotho is **vested** absolutely and **irrevocably** in the Basotho Nation and is held by the State, no person, other than the State, shall hold any title to land except as provided for under customary law or under this Act. Where the customary law is inconsistent with this Act, this Act shall prevail (sect. 3).

The power to grant titles to land, to grant or create servitudes, to **revoke** or derogate from an allocation made under Part II, to **terminate** or revoke a lease, license or servitude is vested in the King (sect. 4). Part II concerns (registrability) of titles in land resulting from land allocation. Part V concerns leases and licenses to use or to use and occupy land for the purpose and under conditions specified in the license. Article 37 provides for the creation of servitudes to use or to use and occupy land for the purpose and under conditions specified in the license (sect. 44).

Whenever it is necessary in the public interest to set aside for public purposes land held under a lease, the Minister, after consultation with the Principal Chief having jurisdiction and upon obtaining the King's assent, shall declare the land to be so required (sect. 54). There is hereby established for the purposes referred to in this Act a Land Tribunal consisting of a chairman and two assessors (sect. 64). Part IX provides for public servitudes. Part X applies to land under Part II which is the subject of a registrable title and to all land within urban area, selected development areas and selected agricultural areas. The Commissioner of Lands shall keep

comprehensive records of all land to which this part applies (sect. 75). (99 sections divided into 13 parts and completed by 3 schedules).

QUESTIONS

- a) What is the main duty assigned to Land Act 1979? (2)
- b) Which duties does it have to perform? (12)
- c) List the powers given to Part II. (5)
- d) Which powers are vested in the King? (8)
- e) Give the verbatim quote about Part IX. (8)
- f) Give synonyms of the bolded words as used in the text. (5) **[40]**