



# KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2008/2009

## FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAW

### LPL 101: CUSTOMARY LAW IN KENYA

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**DATE:** Tuesday 25<sup>th</sup> November, 2008

**TIME:** 8.00 a.m. – 10.00 a.m.

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### INSTRUCTIONS

**Question 1 is compulsory. Answer any other two (2) questions.**

1. Would you as a legal scholar advocate for the consolidation and codification of African Customary Law in Kenya. Give your considered reasons for and against such a proposal.

**(30 Marks)**

2. Using decided cases, illustrate three (3) areas where one may bring up a claim under Customary Law in the Kenyan Courts.

**(20 Marks)**

3. “ The High Court and all subordinate courts shall be guided by African Customary Law in civil cases in which one or more of the parties is subject to it or affected by it or so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law and shall decide such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay”

Discuss the implication of this legal provision vis-à-vis the manner in which African Customary Law has been applied or misapplied in Kenya.

**(20 Marks)**

4. To what extent does the Law of Succession Act 1981 embody Customary Law rights of inheritance in Kenya?

**(20 Marks)**

5. The concept of trust in land under the Registered Land Act has been imported into judicial application in order to recognise customary land rights in Kenya.

Discuss the statement with the aid of case law to show where the Courts have applied the concept.