

STUDY NOTES (2023) FOR AFRICAN CUSTOMARY LAW-

IND2601

BY NANGAMSO N

AN INTRODUCTION TO AFRICAN CUSTOMARY LAW

LECTURE 1

1.1 THE LAW AND HUMAN RELATIONSHIPS

Public law

- Any legal relationship between people –individuals or groups, or a government and its subjects creates responsibilities and obligations.
- The subject is obliged to abide by the laws enacted by the government.
- Government is obliged to protect the subject.
 - Legislative organs (Parliament) responsible for passing statutes.
 - Executive organs -responsible for the application of statutes and other public services.
 - Judiciary – refer to the courts.
- When two individuals enter into a contract, one is obliged to pay the price and the other to deliver.

Private law

- Legal relationships between individuals and groups in their capacity as private persons.
1. The aim of any legal system is to maintain order within the society concerned.
 2. Maintenance of order is supported by means of approving and disapproving legal sanctions.

1.2 THE NAME OF THIS SUBJECT

- a. In customary law, the emphasis tends to be on duties rather than on rights.
- b. The term "customary law" means "the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples" (section 1 of the Recognition of Customary Marriages Act 120 of 1998).

1.2 THE DIVISION OF CUSTOMARY LAW

- Initially, most of the indigenous African people in Africa had their own independent "states.
- Africans had their own authority under the supervision of the tribal chief.
- Some kingdoms consisted of several tribes and remnants of tribes, ruled by a king or a paramount chief.

Customary Public Law

- Customary public law governs the relations **between traditional authorities and subjects.**
- And the relations between these authorities within the tribe.

Subdivision of Customary Public Law

1. Customary Constitutional and Administrative Law
 - a. Relates to the **composition, powers and functions** of the public organs of authority.
 - b. In a Tribe, the highest authority is the tribal chief.
 - i. The tribal chief has various councils that help him to perform his duties.

Law Study Guide South African

Raffaella Di Napoli

A red circular graphic with a gradient, appearing as a semi-circle or a partial circle, located to the right of the author's name.

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Table of Contents Law Study Guide South African

1. Understanding the eBook Law Study Guide South African
 - The Rise of Digital Reading Law Study Guide South African
 - Advantages of eBooks Over Traditional Books
2. Identifying Law Study Guide South African
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Law Study Guide South African
 - User-Friendly Interface
4. Exploring eBook Recommendations from Law Study Guide South African
 - Personalized Recommendations
 - Law Study Guide South African User Reviews and Ratings
 - Law Study Guide South African and Bestseller Lists

5. Accessing Law Study Guide South African Free and Paid eBooks
 - Law Study Guide South African Public Domain eBooks
 - Law Study Guide South African eBook Subscription Services
 - Law Study Guide South African Budget-Friendly Options
6. Navigating Law Study Guide South African eBook Formats
 - ePub, PDF, MOBI, and More
 - Law Study Guide South African Compatibility with Devices
 - Law Study Guide South African Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Law Study Guide South African
 - Highlighting and Note-Taking Law Study Guide South African
 - Interactive Elements Law Study Guide South African
8. Staying Engaged with Law Study Guide South African
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Law Study Guide South African
9. Balancing eBooks and Physical Books Law Study Guide South African
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Law Study Guide South African
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Law Study Guide South African
 - Setting Reading Goals Law Study Guide South African
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Law Study Guide South African
 - Fact-Checking eBook Content of Law Study Guide South African
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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