

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2017

PAPER TITLE: FAMILY LAW

COURSE CODE: LAW 206

TIME ALLOWED: THREE (3) HOURS ONLY

TOTAL MARKS: [100]

INSTRUCTIONS:

- 1. ANSWER ANY FOUR QUESTIONS.**
- 2. ALL QUESTIONS CARRY EQUAL MARKS.**
- 3. THIS QUESTION PAPER CONTAINS FOUR PAGES. PLEASE ENSURE THAT YOU HAVE THEM ALL.**

UNLESS PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR, DO NOT OPEN THIS PAPER.

Question 1

Compare and contrast the decision in *Venter v Venter (1949 (4) SA 123 (W)* with that of *Van Niekerk v Van Niekerk 1959 (4) SA 658 (GWLD)* and give an opinion as to which one is good law.

(25 marks)

Question 2

Eight months ago Florencia's wealthy boyfriend, Josiah, asked her to marry him. Florencia was so overjoyed and had no hesitation accepting Josiah's proposal. Various gifts were exchanged between the parties as a sign of their commitment to each other. Florencia sold her house worth E1,500,000.00 in Malawi and relocated permanently to Swaziland impatiently waiting for the "big day" when her boyfriend of seven years will walk her down the aisle. She concluded various contracts in preparation for her wedding, including catering, hall bookings, stage setting, sound hire and entertainment, video and lighting. In total she spent E150 000.00.

Josiah, who has been in another relationship with Judith for the past three months, now refuses to marry Florencia as his heart has been stolen by Judith.

Florencia has approached you for legal advice as she intends to sue Josiah for breach of promise to marry. Advise her fully making reference to relevant case law.

(25 Marks)

Question 3

Write short notes on the following concepts and their relevance in family law:

- (a) *Stuprum*. (5 Marks)
- (b) Sterility. (5 Marks)
- (c) *Consortium omnis vitae*. (5 Marks)
- (d) Putative marriage. (5 Marks)
- (e) Restoration of conjugal rights. (5 Marks)

Question 4

In the case of ***Nonhlanhla Virginia Sacolo v Christopher Sacolo & Others Civil Case No. 4095/08*** (Unreported High Court judgment delivered in July 2010) His Lordship, Mamba J. drew a distinction between the grounds for divorce recognised under the laws of Swaziland and the grounds for divorce under South African law. Critically discuss the legal position obtaining in Swaziland on divorce vis-à-vis the South African position and suggest reforms where possible.

(25 marks)

Question 5

Advocate Ntuthuko is a successful legal practitioner in the Kingdom of Kwamashu. He is married out of community of property to Joy, a teacher at Ngcoseni High School. In June 2016 he was instructed to represent the Kingdom of Kwamashu before the International Court of Justice (ICJ) in a case between the Republic of Kuvukiland and the Kingdom of Kwamashu ICJ Reports 2012, p99 wherein Kuvukiland is claiming reparation on behalf of its subjects who were kidnapped, raped and tortured by Kwamashu soldiers during World War II. As a result of his appointment, Ntuthuko

therefore had to stay in the Netherlands for four months pending finalisation of the case. He left his wife at Ngcoseni.

At the end of each month Adv. Ntuthuko would send his wife a paltry E300.00 to buy household necessities. Joy felt that this amount was inadequate and accordingly exceeded her limit as she would bind her husband's credit and purchased groceries, electricity units, fuel for transporting the parties' children to and from school, silk and other fabric, shoes and make-up. Thus, in total she committed her husband's credit to the tune of E12 000.00 (Twelve Thousand Emalangen) in respect of the items mentioned above. The supplier of the goods (Lerato Holdings) has issued summons against Advocate Ntuthuko on the basis of the credit agreements concluded by his wife, Joy. The Plaintiff (Lerato Holdings) contends that the goods supplied were household necessities and thus Advocate Ntuthuko is obliged to pay for them. *A contrario*, Advocate Ntuthuko argues that he is not indebted to the Plaintiff because he and his wife are married out of community of property and thus his wife cannot bind his estate. He further argues, in the alternative that the goods supplied were for the leisure of his wife and he cannot be ordered to pay for them.

Citing authorities, advise on the following:

- (a) To what extent, if at all, can Joy bind her husband's credit even if the marriage is out of community of property?

(10 Marks)

- (b) Whether the goods supplied are indeed within the scope of your answer to (a) above, and the factors to be considered by the courts in determining this issue.

(15 Marks)