

**UNIVERSITY OF ESWATINI**  
**INSTITUTE OF DISTANCE EDUCATION**  
**BACHELOR OF LAW LLB-IDE**  
**MAIN EXAMINATION PAPER – MAY 2019**

**PAPER TITLE : FAMILY LAW**

**COURSE CODE : LAW 206 - IDE**

**TIME ALLOWED: 3 HOURS**

**TOTAL MARKS : 100 MARKS**

**INSTRUCTIONS:**

- 1. THE PAPER HAS FIVE (5) QUESTIONS IN ALL.**
- 2. ANSWER QUESTION AND ANY THREE (3) QUESTIONS**
- 3. MARKS ARE INDICATED IN THE BRACKETS AT THE END OF EACH QUESTION**
- 4. WRITE LEGIBLY**
- 5. START EACH QUESTION IN A NEW PAGE**

**DO NOT OPEN THE PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.**

### Question 1 (Compulsory)

Mlandvo married Temantimandze according to civil rites. He fortunately got employment at ESKOM in the Republic of South Africa. He comes home on weekends to check on his wife Temantimandze. They have four children. Mlandvo then meets Sandra, a beautiful girl of Swazi origin working at ABSA Bank in Pretoria. She is the daughter of a Chief in the northern Hhohho region. They decide to get married. They then go on to marry according to Swazi law and custom. Mlandvo pays 50 herd of cattle as *lobola* for Sandra. The customary ceremony is finalized at the Umphakatsi, being Sandra's parental homestead. Three children are born of the marriage between Mlandvo and Sandra. Mlandvo unfortunately succumbs to death in a fatal car accident at Carolina. His estate is being administered by the Master of the High Court of Eswatini in the Hhohho district. Temantimandze discovers that Mlandvo had a customary marriage with Sandra. She now wants to approach the High Court to set aside the latter marriage with Sandra as bigamous. In a verbal conversation between yourself and Sandra's lawyer (Mr. Abdul), the latter informs you that it shall be argued on behalf of his client that the second marriage between Mlandvo and Sandra is not a marriage "*in terms of the Act*" to amount to a prohibition in terms of section 7 of the Act. What are the prospects of your client's (Temantimandze's) success in her claim? Advise her fully. [25 marks]

### Question 2

Andile and Bongiwe promised to marry each other on the 26<sup>th</sup> December 2018. Bongiwe is a young woman of 24 years of age who dearly loves Andile. She is very honest and faithful to her man and she does everything to retain the relationship. She has even gone as far as Browns Jewellery Inc. in Mauritius to buy an engagement and a wedding ring equivalent to the value of E35 000. She made further preparations by buying a nice Gucci suit for Andile from a shop in Sandton in South Africa worth R9999.00. She further bought Andile a fragrance from a merchant in Durban valued at R4999.00. On the 25<sup>th</sup> December 2018, Andile by way of Whatsapp message tells Bongiwe that "... *My feelings have since changed about you. I no longer have the affection I had before. I want to be honest with you, I do not love you anymore...*" Bongiwe is disheartened by such a message and she sends back to Andile and asking, "*Are you sure about all these...we can still make it work*". Andile just ignores the message. Bongiwe's mother approaches you as her lawyer and they are keen on

suing Andile. During consultation, Bongiwe was crying non-stop at your offices. Advise with reference to authority on the following:

- (a) The prospects of any claim or cause of action Bongiwe may institute against Andile. [20 marks]
- (b) Can Bongiwe be able to recover the amount of expenses she incurred preparing for the marriage including the rings? [5 Marks]

### Question 3

- (a) Discuss fully the formal requirements for a valid civil rites marriage. [15 marks]
- (b) Mr and Mrs A are married. They have two children, a boy B and a girl C. B marries D and two children are born from the marriage, E (boy) and F (girl). They also adopt a boy, P and a girl Q. P and Q are not related either by blood or affinity. E marries G and three children are born out of the marriage, H, I and J (J is G's daughter from a previous marriage). Consider the following by giving a reason for your answer:

- i. If Mrs A dies, can Mr A marry F? [2 marks]
- ii. If D dies, can B marry Q? [2 marks]
- iii. Can P and Q marry each other? [2 marks]
- iv. State the degree of relationship between Mrs A and F? [2 marks]
- v. Can H, a boy marry J? [2 marks]

### Question 4

- (a) Mr Dube is a well-known dentist running his practice at Mbabane. He also teaches BSc Dentistry part-time at the MEDUNSA. He is married to Jabu out of community of property. She has no full-time employment but sells perfumes around town as a hawker with no permanent shop. They live at Tubungu Estates, Matsapha. The husband is currently on secondment at the University of Tel-Aviv. He had to leave his wife and children for a period of three months. The wife whilst the husband is away ordered a massaging couch from Geen and Richards, Cape Town. She also buys on

credit a new Samsung tablet gadget for purposes of making Skype videos with Mr Dube whilst away. She further purchases expensive jewellery from Sterns. The suppliers of the goods aforesaid have since issued summons claiming the price of the goods and a mora interest from the Mr. Dube. Mr Dube refuses to pay arguing that these are not a household necessities, but instead these were 'for the luxury of his wife'. Discuss the principles applicable for spouses to bind each other for household necessities. [20 marks]

(b) What are the requirements for spousal maintenance? Discuss with reference to legal authorities. [5 marks]

### Question 5

Demonstrate your understanding of the following terms:

- (a) The difference between impotence and sterility [5 marks]
- (b) The difference between void and voidable marriages [5 marks]
- (c) *Consortium omnis vitae*. Can a spouse sue a third party on infringement of his/her consort in Eswatini? [10 marks]
- (d) The best interests of the child principle [5 marks]