



UNIVERSITY OF ESWATINI

SEMESTER II **MAIN** EXAMINATION PAPER, JUNE 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

Course Code: **LAW206**

FAMILY LAW (LLB N/P)

Time allowed: 3 Hours

Instructions:

1. Answer any **FOUR (4)** Questions.
2. Each Question Carries 25 Marks.
3. Begin each question on a new page.
4. Make sure that you write legibly, that your expression is clear and that you refer to authority.

Special Requirements: NONE

Additional Material(s): NONE

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance card but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

QUESTION 1

- (a) Compare the element of 'consent' as it applies between a civil rites marriage and a Swazi customary law marriage. In your view, is there consent in a marriage according to Swazi law and custom? Support your answer with authority. [15 marks]
- (b) How can minors who wish to marry acquire the requisite legal capacity? [5 marks]
- (c) What is the difference between sterility and impotence? [3 marks]
- (e) Define *stuprum*? [2 marks]
- [25 MARKS]

QUESTION 2

It is a common occurrence in the Kingdom of Eswatini that two people marry first under Swazi law custom through the *kuteka* ceremony followed by the payment of *lobola*, and then proceed to have a civil rites marriage solemnized. Write a legal opinion in which you explain what the legal position would be should one of these marriages be dissolved by a High Court order. In your opinion, refer to decided cases.

[25 MARKS]

QUESTION 3

"... This judgement represents a search for that Guardian knot ... the undoing or cutting of which frees the woman from any relationship with her former husband, once and for all ..."

-per MJ Dlamini JA

Discuss the procedures, if any, for the dissolution of a Swazi customary law marriage.

[25 MARKS]

QUESTION 4

Sipho *tekaed* Hleziphi under Swazi law and custom in 1998. Hleziphi was smeared with red ochre during the ceremony. Lobola was not paid. Both parties stayed together at Maphalaleni in the Hhohho region where they were allocated a piece of land through *kukhonta* by the local Chief. They have four children born out of the marriage. Sipho later enrolled at UNISA where he successfully completed his Bachelor of Commerce. He then got a good paying job as a Marketing Manager at Nedbank in Mbabane. He now stays at Dalriach, Mbabane. In 2002 Sipho met Pearl, a beautiful young lady of Mbabane and they decided to get married at Mbabane under civil rights in community of property. Sipho built a nice big house at Mbabane and accumulated valuable assets. Last month, he failed a cancer operation at a clinic in South Africa. His estate is reported to the Master of the High Court. During the next of kin meeting, Hleziphi produces a certificate of their Swazi law and custom marriage. Pearl, on the other hand, pushes for a greater share of the estate because she argues they were married in a civil rites marriage. Pearl, through her lawyer, approaches the High Court for a direction on the matter.

Advise on the prospects of success of Pearl's application on the following issues;

- (a) The legal status of the marriage between Sipho and Pearl? [5 Marks]
- (b) Sipho did not pay lobola to the family of Hleziphi. Is the Swazi law and Custom marriage still valid? [10 marks]
- (c) Pearl alleges that Hleziphi left and deserted the matrimonial home at Maphalaleni and decided to stay at Edlangeni her parental homestead. Was the marriage under Swazi law and custom terminated? [5 marks]
- (d) Does the death of Sipho terminate the marriage he had with Hleziphi? [5 marks]

[25 MARKS]

QUESTION 5

Freddy and Zinhle have a girl child named Zamokuhle. The young girl is eight (8) years old and she resides with her mother at Matsapha. Her mother works in one of the factories around Matsapha and she does not have sufficient money to support her young girl. Freddy is a chartered accountant with one of the big financial institutions around Manzini and is earning a very good salary. He also has a number of investment policies. Freddy is now married to Gugu and they reside at a townhouse at Madonsa in the Manzini region. He also has children with Gugu, who all attend at Ka-Zakhali Private School. Zamokuhle attends a government school at Matsapha and her mother is struggling to provide her daily necessities including food and clothing. She tried calling Freddy who does not answer her calls, save, for one last week where he said, "You are invading my space". Advise Zinhle on the following;

- (a) Does Freddy have a duty towards the daughter as he is not married to Zinhle? [2 marks]
- (b) What is the course of action available to Zinhle? [3 marks]
- (c) What are the necessary details required to support her claim above? [4 marks]
- (d) Does a maintenance order come to an end? Is there a room for making an extension of a maintenance order and how? [3 marks]
- (e) If a person refuses to maintain despite a maintenance order, what is the remedy available to the parent of the child in need of maintenance? [3 marks]
- (f) Freddy is due for retirement in November 2018. Does the child have any maintenance claim from his pension? [3 marks]
- (g) Which is the Children's Court for maintenance purposes? [2 marks]
- (h) What are the main considerations which the court will usually consider when making a maintenance order? [5 marks]

[TOTAL: 25 Marks]

END OF EXAM