



SCHOOL OF LAW

NLLB201 FAMILY LAW

END OF FIRST SEMESTER EXAMINATIONS

NOV/DEC 2023

LECTURER: DR. E. RUTSATE

DURATION: 3 HRS

GENERAL INSTRUCTIONS TO CANDIDATES

1. Do NOT write your name on the answer sheet.
2. Answer **FOUR** questions only, two from Section A and two from Section B.
3. **Question 1** in **Section A** and **Question 4** in **Section B** are compulsory.
4. Begin your answer for each question on a new page.
5. Each question is worth **25 marks**.

SECTION A

Question 1 (Question 1 is compulsory)

- (a) Define “the best interests of the child” principle. (5 marks)
- (b) Outline the different legal and human rights frameworks under which “the best interests of the child” principle is provided for. (8 marks)
- (c) With reference to both Zimbabwean and South African case law discuss the different legal scenarios under which the courts have used the principle of “the best interests of the child”. (12 marks)

Question 2

Define any five of the following Latin maxims or words and relate each of them to the Family Law scenarios in which they may be used;

- (a) *In flagrant delicto* (5 marks)
- (b) *Volenti non fit injuria* (5 marks)
- (c) *Pater est quem nuptia demonstrant* (5 marks)
- (d) *Exceptio plurium concumbentium* (5 marks)
- (e) *Res ipsa loquitur* (5 marks)
- (f) *Contract sui generis* (5 marks)
- (g) *Contumeliam* (5 marks)
- (h) *annus luctus* (5 marks)
- (i) *Audi alteram partem* rule (5 marks)

Question 3

With reference to the different types of families in existence from time immemorial, it has been observed by philosophers such as Engels that, the family is in a state of continuity and change.

Select at least five different types of family from those below and briefly explain the characteristics of each: (i) Primitive stage of family; (ii) Group marriages family; (iii) Consanguine family; (iv) conjugal extended family; (v) consanguineous extended family; (vi) three generation stem/ joint families; (vii) nuclear family; (viii) commuter family; (ix) repository family; (x) composite family etc. Each family description is worth 5 marks.

SECTION B

Question 4 (Question 4 is compulsory)

Assume you are a Magistrate at Harare Civil Court. The maintenance case of Tilda Dube versus Tom Gutu is brought before you for a hearing. The facts of the case are as follows; Tom and Tilda were married 16 years ago under a civil marriage. Tilda has three children with Tom namely Susan (15); Ben (13) and Norma (9). All these children attend private school. Tilda is self-employed and makes around \$4,000 per month. Tilda and Tom have since gone on separation and he has not been contributing any maintenance for the children. Tilda is feeling the burden of looking after the children on her own. She pays rent in the sum of \$500 per month. Norma is asthmatic and requires expensive medication. Tilda is also looking after her parents who are in the rural areas.

Tom on the other hand is employed as a General Manager at a retail outlet. His net income is \$5,000 per month. Tom's defence is that he will only look after the children if Tilda and the children come back home. He is afraid that if he gives Tilda any money, she will be reckless and not spend it on the children. He also avers that the amount in the sum of \$3,300 that Tilda is seeking (i.e. \$1,100 for each child) is excessive. If the court finds that he should be paying maintenance (which he still disputes that he should) he is offering \$300 per child per month. On top of it all, Tom avers that a month prior to the current maintenance application, he also received summons from his son Talent who was born from a relationship he had with one Sarah Kaseke. Talent's mother never made an application for maintenance but now she has been laid off from work and she is finding it hard to pay fees for Talent who is 20 years old and a student at the University of Zimbabwe. Tom is also looking after his late sister's three children and he hardly has any money left at the end of the month. At the hearing, Tom's lawyer vigorously cross examines Tilda and she ends up crying.

After hearing the case, prepare a judgement covering the following issues:

- (a) The factors that the court considers in determining whether or not the respondent should pay maintenance; (7 marks)
- (b) The quantum of maintenance based on the *Gwachiwa* formula and any other factors that the court will take into account in making a determination on the quantum; (10 marks)
- (c) Whether or not Tom is legally liable to pay maintenance for Talent and why? (4 marks)
- (d) The nature of a maintenance hearing and what the court can do. (4 marks)

Question 5

Varume Ngwarai is a pressure group advocating for the rights of men. They are due to appear before the Parliament of Zimbabwe Portfolio Committee on Women, Gender and the Youth with the aim of expressing their disappointment on the law relating to paternity. In a press conference that they held, they made reference to a newspaper article which stated that out of 11 cases of

paternity, 7 of the alleged fathers turned out not to be the fathers. Reference was also made to the Television Show by one Tatenda Manyepo named DNA Realities Show where a significant number of women have been found to be pointing to wrong men as having fathered their children. Assume you are the legal officer of Equality Rights Now in Zimbabwe (ERNZ). The Chairperson of the Parliamentary Portfolio Committee approaches you for legal advice on the issue.

Prepare a comprehensive paper critically analyzing the law relating to paternity. Your answer should be backed by comprehensive case law from local and other jurisdictions on how Zimbabwe and other countries approach the issue.

Question 6

Tukai Makomo got customarily married to Sekai Mvura in 2015 whereby Tukai paid \$800 in bride price or lobola to Sekai's parents. The couple registered their customary law marriage soon thereafter. The couple lived together for 3 years with no child. Hence starting in 2018 Tukai started having many other girlfriends in a bid to have a child because he believed that it was Sekai who was barren. The couple started having marital problems whereby they would always be fighting over Tukai's extramarital affairs. In January 2019 as an act of revenge, Sekai started having an extra-marital affair with Jonasi, a neighbour who had his own wife and two children who were both girls. Sekai fell pregnant as a result of her affair with Jonasi and gave birth to a boy child Mark who is now aged 4 years. Mark looks exactly like Jonasi's two daughters. Tukai accepted Mark as his child but his marital problems with Sekai continued and he continued with his extra-marital affair with his long-time lover, Muchaneta. In June, 2020 Sekai was caught *in flagrant delicto* (red handed) by Tukai having sexual intercourse with Jonasi in Tukai and Sekai's bedroom. Sekai fled to her parents' home with her child Mark, telling Tukai that Mark was not his child. The two later reconciled and Sekai returned home in August 2023. Tukai has sued Jonasi for adultery damages while Sekai has also sued Muchaneta for adultery damages in the local Magistrates Court. In responding to Tukai's action, Jonasi is admitting the adultery and wants to have custody of Mark claiming him as his biological son.

Tukai and Sekai have approached you as a lawyer with Freedom Alive Probono Lawyers Association for free legal advice on their cases as they seek a way forward. Advise them accordingly.

(25 marks)

END OF EXAMINATION