



SCHOOL OF LAW

NLLB 201 FAMILY LAW

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER/DECEMBER 2024

LECTURER: MR V NKIWANE

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

1. Answer THREE (3) questions in all. This paper is divided into TWO sections. Answer question ONE in section A, which is compulsory and any TWO questions in section B.
2. Read All questions carefully before attempting to answer any.
3. Cite relevant authority to support all your answers.
4. Write legibly.

SECTION A

THIS SECTION IS COMPLUSORY

QUESTION 1

Joshua and Sara were married in 2007 under the Marriage Act [*Chapter 5:11*]. Thandeka is their only child and is now aged 16. She attends school at Watershed College, one of the most expensive private schools in Zimbabwe and is now in form 4. Thandeka is the star netball player in the school and was named captain of the school team when she was in Form 2. She is also academically gifted and scoops virtually all the yearly merit awards. She dreams of becoming a medical doctor. As a result of her netball exploits, Thandeka is on a lucrative sports scholarship.

Joshua is one of the top lawyers in Mutare, and his annual income is over \$ 500,000.00. Sara is a qualified nurse but she and Joshua agreed that she should give up her career as a nurse as soon as Thandeka was born and concentrate on raising their child and looking after the home. Sara's life revolves around her daughter, Thandeka. She is her number one netball fan and attends all her matches and school functions. However, David rarely attends any of Thandeka's school activities, even though he is close to his daughter and calls her his "little girl ". Joshua spoils Sara and provides her with every material need she asks for. She drives the latest car model she fancies. She also has a credit card without a fixed limit. Until a year ago, Sara thought she was in marital bliss. Unbeknown to her, Joshua has been having numerous extramarital affairs. One day, she decided to surprise Joshua in his office by bringing his favourite meal (goat tripe) to his office as lunch. As the receptionist was not at her desk, Sara walked straight into Joshua's office and opened the door without knocking. To her shock, she found Joshua having sexual intercourse with her best friend, Minetoo, on his office table. Soon after the incident in the office, Joshua moved out of the matrimonial home to live with Minetoo. Sara has since found out that Joshua has been having intimate relations with a string of other women, including his personal assistant.

The incident in Joshua's office and his subsequent act of moving out of the matrimonial home affected Sara so much that she sunk into depression. She started seeing a psychiatrist, Gororo. After a few therapy sessions, Gororo convinced Sara that they should have an affair as a way of

revenge against Joshua. Sara and Gororo were having sexual intercourse virtually every time Sara went for therapy.

Six months ago, Sara relented on her affair with Gororo and converted to the Seventh Day Adventist faith. She prayed every day for God to repair her broken marriage. After many months of begging, Sara convinced Joshua to come back home. For a full three months Joshua and Sara lived like husband and wife and they decided to renew their marriage vows. They also discovered that Sara was pregnant. However, Joshua continued to see Minetoo behind Sara's back. Two weeks ago, Joshua moved out of the matrimonial home and immediately issued summons for divorce.

Sara wants to oppose the divorce. She is convinced that their marriage can still be mended. Her belief is fortified by the fact that when Joshua came back home their marriage had returned to normalcy. She sees her pregnancy as a sign that they are meant to be together. She is also opposed to divorce on religious grounds and believes that through prayer, their marriage will be saved. On the other hand, Joshua is adamant that he wants a divorce in order to marry Minetoo as he no longer has any love for Sara. He regards Sara as a loyal, caring and loving wife whom he will respect for the rest of his life. He admits that he is in a state of confusion but, believes that if he does not marry Minetoo his life will be miserable.

After learning of the developments between her parents, Thandeka is completely shattered. She loves both her parents and does not want them to divorce. She has threatened to run away from home and never come back.

A. Advise Joshua on whether he can obtain a decree of divorce in the face of fierce opposition from Sara. **[15 Marks]**

B. Should the court grant a decree of divorce, advise Joshua on the following:

I. How the court is likely to decide the custody of Thandeka. John believes that he should get sole custody as he has the means to provide Thandeka with her needs and the lifestyle she is

accustomed to. He also points to the fact that Minetoo will be a good mother to Thandeka as she also has a daughter of the same age as Thandeka who is her best friend.

[20 Marks]

II. Whether Sara would be entitled to permanent maintenance. Joshua opposes paying her permanent maintenance because he believes that she must return to work since she is a qualified nurse.

[15 marks]

[Sub-Total:50 marks]

SECTION B

ANSWER ONLY TWO QUESTIONS IN THIS SECTION

QUESTION 2

“Although the term family is frequently used in academic literature and statutory provisions, it is in fact rarely defined. One possible reason why such a definition is avoided is that the concept of family varies from culture to culture and from one historical period to another.”
Rwezaura B et al “Parting the long grass: Revealing and reconceptualising the African family.

Explain the different forms that “family” has taken from time to time and highlight any variables that are useful for maintaining a scientific criterion when defining the term. **[25 Marks]**

QUESTION 3

a) Thabani and Rumbi have been in an intimate relationship for the past five years. They have a common understanding that they will get married as soon as Thabani has enough money to pay lobola to Rumbi’s parents. Two years ago, Thabani convinced Rumbi that they should move in together. They live in a cottage rented by Thabani in Chikanga township. However, as soon as they moved in, Thabani introduced several rules on how he wanted her to conduct herself. These included the following:

- That Rumbi must not wear makeup;
- That Rumbi should not associate with other women but should come straight home after work;
- That she should not wear trousers, short dresses or skirts which expose her thighs;
- That she should stop all night prayer meetings at her church.

Rumbi initially agreed to these rules but she soon found out that she could not abide by them. Rumbi works in a beauty shop where the employer demands that she should look attractive to entice customers. She has found her life lonely and misses her friends. Rumbi is very religious, and she is used to attending all-night prayer meetings on the last day of each month. Rumbi has tried to discuss the issue with Thabani but refuses to listen, insisting that his rules cannot be changed. As a result, Rumbi has chosen to defy Thabani. However, whenever Rumbi goes out with her friends, Thabani will assault her and sometimes lock her out of the cottage. When she dresses up for work, Thabani demands that she parades before him to satisfy himself that she is appropriately” dressed. Sometimes, she is made to remove what she is wearing so that she can wear what Thabani has chosen. Last week, she attended an all-night prayer meeting at her church, and Thabani followed her and demanded that she return home. When she refused, he dragged her out of the church, bundled her into his car and drove home, where he locked her in the cottage, went out to a nightclub and came back in the early hours of the morning.

Rumbi has had enough of Thabani’s behaviour and wants to stop it. She does not want to end the relationship, but she wants to stop Thabani’s behaviour.

Advise her on the remedies available to her in this situation.

[10 Marks]

b) Enock lived with Mary for 18 years until they separated three years ago. Two children were born out of the relationship: Tunga, now aged 19, and Hazel, now aged 15. Tunga is now doing his upper sixth while Hazel is in form 3. After they separated, Mary applied for and obtained an order of maintenance against Enock in the sum of \$150.00 in favour of Tunga and \$100.00 in favour of Hazel per month. Enock is employed as a branch manager at a bank. However, he was

recently demoted to the rank of supervisor after a disciplinary hearing for misconduct at his workplace.

Three months ago, Enock told Hazel that he could no longer afford the maintenance amounts stipulated in the court order and has since been paying \$75.00 per month in favour of Tunga and \$50.00 in favour of Hazel. However, Mary insists that Enock must pay the full maintenance in accordance with the court order.

Enock has come to you for advice. He tells you that because of the demotion, he can no longer afford to pay the full amount stipulated in the court order and he has done the right thing by reducing the amount to what he can afford. He also tells you that he has met and fallen in love with Shamiso whom he is about to marry and that Shamiso has a nine- year old boy he must support as she is not working. He further points out that since Tunga is now 19 years old, he is no longer legally obliged to maintain him.

Advise Enock of his rights and liabilities in this matter.

[15 Marks]

[Sub-Total: 25 marks]

QUESTION 4

Ntombi and Gamba were married in terms of customary law in 2000. Gamba fulfilled all the formalities of a customary marriage but the marriage was never registered in terms of the now repealed Customary Marriages Act. At the time of marriage, Gamba was employed as Principal at a teachers' college in Mutare. Ntombi was unemployed but was in the business of buying groceries from South Africa and reselling them in Zimbabwe. Apart from his job as a principal, Gamba also operated a shop selling spare parts. On many occasions, he would give money to his wife to bring him spares for his shop. He also asked her to act as his bookkeeper and supervise his shop employees. Ntombi and Gamba were blessed with two children who are now grown up and live on their own.

In 2010, Gamba bought a stand in Murambi. He registered it in his name jointly with Ntombi but did not disclose this to Ntombi. Gamba commenced building a six roomed house on the stand

using his proceeds from the shop as well as his earnings as a principal. By 2020, the main structure of the house and roofing were complete. Ntombi continued her business of buying and selling groceries and from time to time, bringing in spares for Gamba as per his instructions. Gamba was involved in a serious motor vehicle accident in June 2021, which paralysed him from the legs to the waist. He was on a wheelchair for a full 12 months. After six months, he was discharged from work on medical grounds and received a substantial amount as his terminal benefits. As a result of the huge medical bills towards his treatment, his shop was closed. Ntombi had to nurse Gamba during that time but continued her business of buying and selling goods. She would ask her sister to come and look after Gamba whenever she travelled to South Africa to order goods. By the beginning of 2024, Gamba had made a full recovery.

Three months ago, Gamba decided to go separate ways with Ntombi. He has since sent his go-between (**munyayi**) to deliver to Ntombi's family **gupuro** (a token, usually a nominal amount of money, given by a man to the family of the customary law wife as a sign that he no longer wants the wife). He alleges that Ntombi has been committing adultery with several men. He cites one, James, who frequented his home with whom he recently had a serious confrontation at his house, leading him to kick Ntombi out of the house. Ntombi is now staying with her sister in Dnagamvura township.

While both Ntombi and Gamba have mutually agreed to go their separate ways, and have agreed on the distribution of their movable assets, they disagree on how to share the house in Murambi. Gamba is only prepared to give Ntombi a 15% share of the house as he argues that the stand and the construction were paid for through his earnings as a principal and proceeds from the shop. He also avers that Ntombi should be penalised for her adultery with James and other unknown men in the distribution of their assets. On the other hand, Ntombi believes that she should get a 50% share of the house as she contributed directly and indirectly to the purchase of the stand and its construction. She points to her contribution through bookkeeping and supervision and her earnings as a cross-border trader, which she used mainly for the upkeep of the home. Gamba counters that by asserting that Ntombi was no more than a housewife and an employee in his business. Ntombi admits to committing adultery with James and other men but believes that this should not have any bearing on the distribution of their assets.

You are a Judge of the High Court and you must decide how the house in Murambi should be shared between Gamba and Ntombi. Citing relevant authority, set out the principles you would apply in deciding the matter. **[25 Marks]**

TOTAL MARKS: 100

END OF EXAMINATION PAPER