



SCHOOL OF LAW

NLLB201: FAMILY LAW

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER 2025

LECTURER: MR NKIWANE

DURATION: 3 HRS

GENERAL INSTRUCTIONS TO CANDIDATES

1. Answer any THREE (3) questions.
2. Read all questions before attempting to answer any.
3. Cite relevant authority to support all your answers.

Question 1

Thabo and Susan were classmates in the LLB programme at Wakanda University, until two years ago when they graduated. They fell in love in their final year and had an affair which lasted for 6 months. Thabo terminated the affair due to persistent rumours that Susan was cheating on him with several of his classmates. A week after the relationship ended, Susan discovered that she was pregnant. She immediately informed Thabo who vehemently denied responsibility pointing to the fact that she had slept with some of his classmates. He also reminded her that they had used condoms each time they had sexual intercourse. Susan gave birth to a boy after 9 ½ months of pregnancy. She has been struggling to maintain the child on her own as she is still unemployed. Thabo joined a top law firm after graduation and is well paid. She wants to claim maintenance from Thabo but Thabo is adamant that the child is not his as he was born after 9 ½ months of pregnancy, which is more than the normal period of gestation. Thabo is demanding that the child, Susan and himself undergo blood tests to establish his paternity. However, Susan opposes this on the basis of her religion.

- (a) Advise Susan of her legal position with regard to the maintenance claim in terms of the common law and statute. **[20 marks]**
- (b) Assuming that Thabo and Susan were married and Thabo was disputing paternity, what would be the legal position? **[5 marks]**

[Sub-Total: 25 marks]

Question 2

“Although the term ‘family’ is often used in academic literature and statutory provisions, it is in fact rarely defined. One possible reason why a definition is avoided is that the concept of family varies from culture to culture and from one historical epoch to another. We are, therefore, left to reconsider what the term might mean in our time and culture. Moreover, besides the tantalising variables of time and culture, in order to define the term ‘family’ and particularly to delineate family membership, one has to contend with the particular purpose for which the term is being used”.

Rezwaura, B et al (1995): “Parting the Long Grass: Evaluating and Reconceptualising the African family” *Journal of African Legal Pluralism and Unofficial Law* No. 35, 25 pp 27 – 8

With the aid of pertinent examples and with reference to Africa and Zimbabwe in particular, evaluate the above assertions on the meaning of the concept “family”. **[25 marks]**

Question 3

Cosmas and Sibongile were married in terms of the Marriage Act, [*Chapter 5:11*] (now repealed by the Marriages Act [*Chapter 5:17*]) on 10 December 2008 until 10 September 2025, when you, as a Judge in the Family Division of the High Court of Zimbabwe, granted Cosmas a divorce on the ground of irretrievable breakdown of the marriage. Part of the reason for the breakdown of the marriage was that Cosmas had been convicted and imprisoned for embezzling money from his employer, Welcome Bank, a leading bank in Zimbabwe. Cosmas was employed as the Chief Executive of the bank at the time. The conviction received wide publicity in the local press and social media because of Cosmas’s seniority in the bank. Prior to his conviction, Cosmas and Sibongile had been in marital bliss and had been blessed with two children, Shamiso, a girl now aged 14 and Njabulo, a boy now aged 12.

While Cosmas was in prison, Sibongile started an affair with Gamba, Cosmas’s best friend. The affair was common knowledge in and around Mutare as both made no attempt to hide it. Gamba even spent some of the nights at Sibongile’s house. The children knew that their mother shared the same bedroom with “uncle” Gamba, as they called him. They are very fond of him. Cosmas got to know of the affair through his friends and when he confronted Sibongile about

the affair, during one of her rare prison visits, she told him that she was not prepared “to let her best years pass while he languished in prison due to his own folly”. On being released from prison, Cosmas immediately filed for divorce, which you have granted.

On granting the divorce, you realised that the parties agree in all aspects of the divorce except custody of the two children of the marriage. You set aside a date on which you are to hear arguments from both parties on the issue of custody of the two children. On the day, Cosmas is claiming sole custody and guardianship of the two children while Sibongile counter claims sole custody and guardianship. On behalf of Cosmas, his lawyer argues that Sibongile is unfit to be awarded custody of the children because of her adulterous affair with Gamba which she openly brandished. He claims that this shows her lack of good morals required of a parent. He acknowledges that his client is unemployed and has low prospects of getting formal employment because of his criminal conviction. However, Cosmas is currently living with his widowed mother in Danganvura who is ready to take in her grandchildren and contribute to their upkeep. Cosmas’s mother runs a mini-supermarket which she is heavily involved in. However, she is prepared to employ a domestic worker to look after the children.

Sibongile counters this by alleging that Cosmas’s criminal conviction renders him unfit to be awarded custody and guardianship of the children. She claims that the wide publicity given to his conviction has negatively affected the children psychologically and as such, they should have minimum contact with him. Sibongile further avers that she is employed as a Registrar at Wakanda University, a very senior position that earns her a four-figure monthly salary. She is therefore well placed to take care of all the material needs of the children. Sibongile further avers that her lover, Gamba has offered to marry her and adopt the children. Above all, she avers that Cosmas went to prison when the children were young and is practically a stranger to them.

In the alternative, Cosmas argues that sole custody of the boy, Njabulo, should be awarded to him because he will soon be a teenager and will need his father’s masculine guidance. At the time of divorce, Cosmas and Sibongile were living in a house in Murambi which has to be sold so that they share the proceeds as part of the divorce settlement. Sibongile is now living in a University house on campus.

As a Judge faced with the custody and guardianship claims of the two parties, set out in detail, the principles you will apply in deciding on the custody and guardianship with respect to the two children. Your answer must also address access. **[25 marks]**

Question 4

- (a) Steven and Chipo were married in 2010 under the Marriage Act [*Chapter 5:11*]. In 2015, they purchased a house in Chikanga which was registered in Steven’s name, although Chipo contributed more than 50% for the purchase of the house. Chipo, who strongly believes that a man should be the head of the family, fully supported the registration of the house in Steven’s name. Over the years, Chipo renovated and extended the house using her own earnings. A few weeks ago and unbeknown to Chipo, Steven sold the house to Wamambo and facilitated the transfer of the house to Wamambo. Last week, Chipo was shocked to receive a letter from Wamambo demanding that she vacates the house as he is now the owner.

Chipo has come to you for advice. She believes that Steven had no right to sell the house without consulting her and as such, the sale is invalid. She also informs you that she paid more than 50% towards the purchase of the house and has since invested substantial amounts of money in renovating and extending the house.

i) Advise her on the validity of her stance. Is the law governing Chipo's situation satisfactory? If not, what reforms would you recommend? **[10 Marks]**

ii) What would your advice to Chipo be if she applied for divorce and wanted a share in the house registered in Steven's name.? **[5 marks]**

(b) Tim and Sara were married five years ago. They have been trying to have a baby without success. After consulting medical experts, they are advised that Tim is sterile. Determined to have a baby, Tim and Sara resolve to adopt. Tim and Sara come to you for advice. They want to know the procedure for adoption and the matters to be taken into account before an adoption order is granted. They also want to know the consequences of an adoption order with respect to the rights and obligations between the child and adoptive parents. Advise them accordingly. **[10 marks]**

[Sub-Total: 25 marks]

Question 5

Shamiso and Alex have been married for 25 years. Shamiso is 45 years old while Alex is now 50. They have two daughters aged 13 and 15. Shamiso is a business woman and runs several lodges and hotels in and around Mutare. She makes more than a million United States Dollars a year. At the time of marriage in 2019, Alex was employed as a lecturer at Afroko University. He did not see the need to work as his wife was making a lot of money. He chose to stay at home and look after the children. He has been a devoted father to his children. He takes them to school and attends all their school functions and events. Although they have employed a domestic worker, Alex volunteers to do most of the cooking and some of the house work. Shamiso has no time for domestic chores but takes care of all the expenses of the family. Alex, who earns a paltry \$ 300.00 per month as pension, spends his earnings on alcohol. Alex enjoys a luxurious lifestyle including driving the latest Mercedes Benz model and a generous credit card.

Alex and Shamiso were happily married until two years ago when Shamiso started committing adultery with several prominent men in Mutare, who include businessmen and politicians. She is popularly known as the "Queen" of Mutare. For the past 12 months, Shamiso has been sleeping out at least three times a week. Whenever Alex confronts her, she dismisses him as a "useless and good for nothing man". Most of the time she spends the night at home she prefers to sleep in the spare bedroom as she finds him "boring" in bed.

Alex has had enough of Shamiso and wants a divorce and has come to you for advice. He tells you that apart from the hotels and lodges, Shamiso owns two houses in Murambi and a house in Morningside, which is their matrimonial home. Her bank account is also worth millions. He tells you that Shamiso is not opposed to the divorce and that they have agreed on everything except two issues.

(a) Alex wants a share of the assets owned by Shamiso and believes that in deciding on the division of assets, the court should penalise Shamiso for the adultery which caused the breakdown of the marriage. On the other hand, Shamiso is adamant that Alex cannot get any of her assets as he contributed nothing to their acquisition. Advise Alex on the issue citing relevant authority. **[15 marks]**

- (b) Alex wants to claim permanent maintenance from Shamiso in order to maintain the luxurious lifestyle he enjoyed. Shamiso is only prepared to support him for six months and insists that he should go back to work and earn a living. Advise Alex on his prospects of success in claiming permanent maintenance citing relevant authority.

[10 marks]

[Sub-Total: 25 marks]

TOTAL MARKS: 100

END OF EXAMINATION QUESTION PAPER