



UNIVERSITY OF ZIMBABWE

2020 Nov/Dec Examinations

Faculty: **LAW**

Department: **LEGAL UNDERGRADUATE
PROGRAMMES**

Paper code and Title: **LB203 FAMILY LAW**

Duration: **3 HOURS**

Examiners: **DR E RUTSATE**

Authorized Materials: Unannotated copies of the Constitution of Zimbabwe

INSTRUCTIONS:

1. This paper contains 2 Sections and 6 Questions
2. Answer FOUR questions, TWO from Section A and TWO from Section B.
3. **Question 1** in Section A and **Question 4** in Section B are COMPULSORY
4. Start each answer on a new page. Note that if a question has sub questions such as a, b or c, it should be treated as one question. Do not answer the sub questions on new pages but as a continuation.
5. Each question carries an overall mark of 20
6. This question paper comprises **6** printed pages

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

SECTION A

QUESTION 1 (COMPULSORY)

The best interests of the child is one of the key concepts under family law that has found place within Zimbabwe's Constitutional provisions as from 2013.

- (a) Briefly outline the different legal and human rights frameworks under which it is provided for at local, regional and international levels. [8 marks]
- (b) With detailed reference to both Zimbabwean and South African case law, discuss the different legal scenarios under which the courts have used the concept. [8 marks]
- (c) Giving cogent reasons in support of the position you take, should judicial officers presiding over court cases involving children use a guideline that defines the concept or alternatively, should they be allowed to use their discretion vis-à-vis what entails the "*best interests of the child*" on a case-by-case basis [4 marks]

[20 Marks]

QUESTION 2

- (a) Outline the types of marriages found in Zimbabwe and what each of them entails at law. [10 marks]
- (b) What are the differences between a void (ab initio) and voidable marriage contract? [5 marks]
- (c) Briefly outline the key rights and obligations of spouses during marriage and at its dissolution. [5 marks]

[20 Marks]

QUESTION 3

- (i) Briefly explain the following terms in family law;
 - (a) Guardianship; [2 marks]
 - (b) Custody; [2 marks]
 - (c) Access [2 marks]

(d) What is the difference between the 3 aforementioned terminologies?
[4 marks]

(e) Cohabitation

[2 marks]

(ii) What do the following Latin maxims entail in family law;

(f) "*pater est quem nuptiae demonstrant*"

[2 marks]

(g) "*Exceptio plurium concumbentium*"

[2 marks]

(h) Maintenance "*pendente lite*"

[2 marks]

(i) Marrying during the "*annus luctus*"

[2 marks]

[20 marks]

Section B

QUESTION 4 (COMPULSORY)

The silence of the night in the Nketa suburb of Bulawayo was broken as shrill screams were heard at the household of Melinda and Aleck Dube. The latter, had unexpectedly come back home after the bus he had boarded to travel to Botswana had had a breakdown 10 km outside Bulawayo. Aleck had used his spare set of keys to open his front door only to be surprised to hear laughter and music coming from the main bedroom. Upon switching the bedroom lights on, he was shocked to see Pastor Mangena from the church that both he and Melinda attended stark naked and drinking what looked like beer. Melinda was also naked. Aleck quickly grabbed the pastor's clothes and ran out of the house as fast as he could with Mangena hard on his heels until the latter realised that he could not catch up with Aleck. All along Aleck was shouting on top of his voice such that most of the neighbours woke up to witness the chase. "*Mangena, what kind of a man are you, pretending to be a God fearing man by day and yet by night you have the guts to sleep on my bed with my wife. I trusted you. At our wedding you were the marriage officer. Now you stab me in the back like this, I am going to get you, you scum bag*". Meanwhile, Melinda had quickly packed her bags and ran off to her brother's house in the same neighbourhood.

The following morning, Aleck contacted Melinda and informed her that he was going to file for divorce. Melinda was unapologetic and blamed everything on Aleck's long periods of absence away from home. She told him that she had not married walls but a man and she was lonely. She told Aleck that she would 'refuse' to be divorced, as she believed that they could work things out. If he insisted on filing for divorce, she would ask the court that Aleck pays maintenance since she was a mere homemaker who at 30 years looked 40 due to the heavy housework that she was doing.

Aleck approaches you in your capacity as a lawyer with Doubting & Thomas Legal Practitioners seeking advice on the following:

- (a) What legal action can be taken against Pastor Mangena and what are the chances of success should Aleck pursue legal action? (5 Marks)
- (b) Whether he can successfully file a case for divorce against Melinda in a situation, whereby Melinda avers that she still wants to remain married to Aleck despite summons for divorce having been filed against her? (5 marks)
- (c) In the event that Melinda counterclaims for post-divorce maintenance, do you think the court will grant the application? (10 marks)

[20 Marks]

QUESTION 5

Ntombiyelanga Dube (hereinafter referred to as Ntombi) had a sexual relationship with one Douglas Moyo for 2 years from June 2017 to July 2019 when Douglas left the country for the United States of America where he was undertaking a one-year postgraduate course. Douglas' last sexual encounter with Ntombi was on the night of 12 July 2019 before he flew off to the USA on 14 July 2019. As always, Douglas used protective measures in the form of a condom during the sexual encounter. On 12 August, 2019 at a friend's party Ntombi met and fell in love with a rich business man called Keith Shumba with whom she also immediately started having a sexual relationship. However, Keith Shumba was married with 2 minor children. Douglas' friends would see Ntombi in the company of Keith late at night in clubs and other drinking places, a development they advised their friend Douglas about in mid-September, 2019.

In early October, 2019 Ntombi advised Douglas that she was pregnant and that he was responsible for the pregnancy which fact Douglas strongly disputed. On 28 May 2020, Ntombi gave birth to a bouncing full term baby boy whom she immediately named Douglas Junior. On 21 July, 2020 Douglas returned from the USA only to receive a summons from Ntombi claiming maintenance for her minor child Douglas Junior and lying in expenses in the sum of \$500 per month for maintenance and a lump sum of \$2000 for lying in expenses. Douglas filed a plea denying any responsibility for the maintenance of Ntombi's child and any lying in expenses because he vehemently denied being the father of the child. He bases his denial of paternity on the following points;

- While he admits having sexual intercourse with Ntombi up to 12 July 2019; he denies that he is the father of Ntombi's child because;
 - When he had sexual intercourse with Ntombi he was using a condom;

- Having last had sexual intercourse with Ntombi on 12 July 2019, the child should have been born around 12 April 2020 which is exactly 9 months (or 40-42 weeks) the normal gestation period of a child. This child was born almost 11 months later.
- He had no access to Ntombi during the relevant time of conception of this child as he was in the USA and has his passport as proof of his residence abroad for 12 months;
- He has evidence that Ntombi was having a sexual relationship with Keith Shumba after he himself had left Zimbabwe and so Keith is the father of the child.
- As drawn from their traditional customs, he has inspected the lines on this child's palms and they do not match his or those of people from his family and clan;
- Finally Douglas argues that if the court is not convinced by his arguments, he will request that the child, himself, Ntombi and Keith Shumba be subjected to either blood or DNA tests as this will show that he is not the father of Ntombi's child.

You are a legal practitioner practising with Shenanigans and Partners Legal Practitioners. Ntombi approaches you seeking legal advice. She particularly seeks to know whether the defences raised by Douglas are acceptable at law and her chances of success in her claim. Supporting your argument with reference to the positions taken in cases such as (i) ***Mtshingwe vs Moyo HB-120-05***; (ii) ***Shumba v Shumba HB-25-05*** and (iii) ***Sanders Moyo vs Helen Moyo HH-31-05***; write down your legal opinion on defences raised by Douglas Moyo and Ntombi's prospects of success in her application. [20 marks]

QUESTION 6

- (a) Amadoda Limukani is a pressure group advocating 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. You are a legal officer with WLSA Zimbabwe. The Chairperson of the Committee approaches you for legal information on the issue.

Prepare a comprehensive paper critically analysing the law relating to paternity. Your answer should be supported by comprehensive case law and comparative jurisdiction on how other countries approach the issue. [10 marks]

(b) The courts in Zimbabwe may grant a divorce when there is evidence showing that a marriage has irretrievably broken down.

What criteria must the court apply to determine whether a marriage has reached the point of "irretrievable breakdown"? Discuss fully with reference to relevant statutory and case law. [10 marks]

[20 Marks]

End of Examination Paper