



UNIVERSITY OF ZIMBABWE

2018 Winter School Examinations

Faculty:	LAW
Department:	PRIVATE LAW
Paper code and Title:	LB203 FAMILY LAW
Duration:	3 HOURS
Examiner:	DR E. RUTSATE

Authorized Materials: **Un-annotated copies of prescribed Statutes**

INSTRUCTIONS:

1. This paper contains 2 Sections and 6 Questions
2. Answer FOUR questions, TWO from Section A and TWO from Section B.
3. NOTE THAT 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 5 printed pages

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

SECTION A

Question 1

Karen Gumbo who turned 18 on 6 February 2018, fell in love with Jim Zindoga, a self-employed business entrepreneur in February, 2017. At the time she met Jim on Valentine's day (14 February), Karen was doing Form 6 at Kwanele High School in Bulawayo where she was the school's Head Girl. Unbeknown to Karen, Jim aged 30 years was already married to one Susan in terms of the Marriage Act Chapter 5:11 out of which union he has 2 minor children, a boy and a girl aged 4 years and 2 years respectively. Jim who has lived most of his time in Harare rents a flat in Bulawayo for use whenever he is in town. The relationship started when on one of his business trips to Bulawayo, Jim saw Karen in full school uniform walking home and offered her a lift. It was during the April school holidays in 2017 that Karen took Jim for introductions to her paternal aunt Mrs Moyo who also lives in Bulawayo. Mrs Moyo told Jim in no uncertain terms that he should not engage in any sexual intercourse with Karen until he married her and he promised not to. However, during the August holidays of 2017 after a wild party in Bulawayo, Jim had sexual intercourse with Karen. He continued doing so indicating that as soon as Karen finished writing her final 'A' Level examinations in December, 2017; he would initiate customary proceedings for a traditional marriage after which they would have a white wedding in terms of Marriage Act Chapter 5:11 after she turned 18 on Valentine's Day, also their affair's first year anniversary.

However, in November 2017, Karen fell pregnant and informed Jim who indicated he would still marry her by her 18th birthday as her pregnancy would not be showing by then. Soon thereafter, Jim disappeared to Harare and avoided personally attending to any business dealings in Bulawayo. He would send his junior employee to do the business transactions in Bulawayo. Karen tracked down Jim in Harare who then indicated that when he met Karen he thought she was above 18 years since most students in Form 6 would be above 18 years. This was coupled with the fact that Karen was big bodied. He also argues that when he first had sexual intercourse with Karen she was not a virgin and he has heard through rumours that she was also having a sexual relationship with the school captain at her school. He insists that this proves that Karen was of loose morals and had not been seduced from a path of virtue. Finally, he argues that he never promised Karen marriage as it was an impossibility, he being already married to Susan with children. He also avers that since Karen was allegedly below 18 at the time he had sexual with her, traditionally the only aggrieved person competent to sue him is Karen's father and not her. On 6 August, 2018, Karen gave birth to a bouncing baby boy she named Kudakwashe. Despite repeated demands, Jim is adamant that he will not pay any damages whatsoever.

You are a junior lawyer at Nxumalo and Partners in Bulawayo. Karen has approached your legal firm seeking legal advice on a number of issues regarding this case and the Senior Partner has asked you to advise Karen on issues regarding Karen's (i) claim for seduction damages and (ii) breach of promise to marry. The Senior Partner has indicated that he would deal with the other issues pertaining to paternity, lying in expenses and maintenance. Explain to Karen the possible

claims that she might possibly have against Jim vis-à-vis (i) seduction and (ii) breach of promise to marry; (iii) the requirements for such an action as well as (iv) the factors that might influence the final amount. In your answer, refer to relevant case law.

[20 Marks]

Question 2

The family is in a state of continuity and change.

Explaining the various stages the family has gone through from past to present, discuss the above statement to support or challenge it depending on the position you take.

[20 Marks]

Question 3

Emanating from the events outlined in Question 1, after three days, the Senior Partner of Nxumalo and Partners where you work has indicated to you that he has a busy schedule and asks you to attend to Karen Gumbo's action against Jim Zindoga on paternity. From the consultation notes Mr Nxumalo wrote down, Karen had further informed him that Jim was not denying having had sexual intercourse with her but that since he was using a condom in all sexual encounters with Karen, he cannot possibly be Kudakwashe's biological father. Secondly he is alleging that Karen was promiscuous and had an affair with the school captain at her former school. Lastly Jim alleges that he is a member of a church whose beliefs and doctrine do not allow him to undergo blood and/or DNA tests and so the court cannot compel him to undergo such tests. He suggests that the court compels the former school captain of Kwanele High School to subject himself to such tests and if he is not found to be the father, then he may consider accepting responsibility for Kudakwashe.

Making reference to relevant case law and the different approaches previously taken by Zimbabwean, South African and Scottish courts on paternity, discuss the defences considered as legally sufficient and/or insufficient to rebut the presumption of paternity for children born out of wedlock.

[20 Marks]

SECTION B

Question 4

Two days ago Mr Nxumalo, the Senior Partner at Nxumalo and Partners finally asked you to take over the whole file pertaining to the case of Karen Gumbo versus Jim Zindoga referred to in Questions 1 and 3 above. Karen had further advised Mr Nxumalo that Kudakwashe was a sickling who was asthmatic requiring regular medical attention. She said Jim had been arguing that since

he denied paternity there was no way he would pay for lying in expenses and maintenance for the minor child. Further it was his argument that Karen was supposed to buy her own maternity clothes. Jim was also arguing that he would not pay lying in expenses as they were uncalled for. However, in the event that the court found him to be Kuda's biological father, the sum of \$800 per month as maintenance would be too exorbitant for him as Karen should also contribute to Kuda's maintenance. He has offered \$200 per month for Kuda's maintenance only. Jim states that he makes on average \$3 200 per month from his business. Although his wife Susan is employed as a Chartered Accountant earning \$5 200 per month, he argues that only her 2 minor children are entitled to benefit from her earnings and not Kuda.

Citing relevant statutory and constitutional provisions as well as case law, advise Karen on her prospects of success in her claims against Jim in relation to;

- (a) A claim for lying in expenses in the lump sum once-off payment of \$2000 vis-à-vis Karen's maternity clothes, baby's clothes bought in preparation of Kudakwashe's birth and the bills paid at the Maternity Clinic at Mpilo Hospital in Bulawayo; [5 marks]
- (b) A claim for maintenance for the upkeep of Kudakwashe in the sum of \$800 per month until Kuda turns 18 years or becomes self-supporting, whichever is applicable at the relevant time. In your advice outline;
 - (i) the issues courts generally look at when assessing maintenance; [5 marks]
 - (ii) the name of an arithmetic formula courts have previously used in calculating maintenance and how one calculates maintenance using it; [5 marks]
 - (iii) whether her claim for Kuda's maintenance is reasonable when strictly checked against this arithmetic formula; [5 marks]

[20 Marks]

Question 5

- (a) Briefly explain the following terms in family law;
 - (i) Guardianship; [2 marks]
 - (ii) Custody; [2 marks]
 - (iii) Access and the difference between the 3 aforementioned terminologies; [4 marks]
 - (iv) Cohabitation [2 marks]
- (b) What do the following Latin maxims entail in family law;
 - (i) Marrying during the "*annus luctus*"; [2 marks]
 - (ii) "*pater est quem nuptiae demonstrant*"; [2 marks]
 - (iii) "*Exceptio plurium concumbentium*"; [2 marks]
 - (iv) Maintenance "*pendente lite*"; [2 marks]
 - (v) "*patria potestas*"; [2 marks]

[20 Marks]

Question 6

(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]