



# UNIVERSITY OF ZIMBABWE

## 2016 NOVEMBER/DECEMBER 2016 EXAMINATIONS

Faculty:	LAW
Department:	PRIVATE LAW
Paper code and Title:	LB 203 FAMILY LAW
Duration:	3 HOURS
Examiner:	SLYVIA CHIRAWU
Authorized Materials:	Unannotated copies of prescribed Statutes including the new Constitution, and unannotated copy of course outline except additions of case citations, Copy of the Convention on the Rights of the Child

### INSTRUCTIONS:

1. This paper contains 2 Sections and 6 Questions
2. Answer **FOUR** questions, **TWO** from Section A and **TWO** from Section B.  
**NOTE THAT QUESTIONS 1 AND 4 ARE COMPULSORY.** Each question carries a total of 20 marks
3. Start each answer on a new page. **Note that if a question has got 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.**
4. This question paper comprises 4 printed pages including the cover page.

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

## SECTION A

**ANSWER TWO QUESTIONS FROM THIS SECTION. NOTE THAT QUESTION ONE IS COMPULSORY**

1. With specific reference to the following cases, *Paunganwa vs. the Registrar – General and another* HH-406-16, *and Katedza vs. Chunga and another* HH-50-03 *and Timbe vs. Registrar-General* SC 25-08, discuss the concept of the best interests of a child as they relate to the registration of birth of a child born out of wedlock; change of name of a child born out of wedlock and the cancellation of a birth certificate. ( 20 marks)
2. Paternity is easy to allege and difficult to disprove. Assess the validity of this assertion. ( 20 marks)
3. It is high time that the Zimbabwean courts did away with the delict of adultery in view of its abolishment in South Africa. Comment. ( 20 marks)

## SECTION B

**ANSWER TWO QUESTIONS FROM THIS SECTION. NOTE THAT QUESTION 4 IS COMPULSORY.**

### **Question 4**

David Moloi is a 36 year old man who runs a successful catering company with his customary law wife Ntokozo Mabure. They met when they were both 18 and fresh out of high school. David paid *lobola* for Ntokozo when she was 19 years old. They agreed that they would have white wedding sometime in the future. They started off selling sweets and fruits in the Kuwadzana High Density suburb of Harare. Gradually, they opened tuck shops before embarking on the catering business. So successful was the business in the first two years that they purchased three houses in Mabelreign, Mt Pleasant and Greendale. These houses were registered in the name of Ntokozo. They also acquired three top of the range vehicles. They also have US\$100,000 in Old Mutual Unit Trusts in the name of Ntokozo. In July 2016, David noted a change in Ntokozo. She became withdrawn and was coming home late. On the 31<sup>st</sup> of August 2016, David was surprised when he got home in Mt Pleasant when he realised that his gate remote was not working. He called Ntokozo who told him that she no longer loved him and he should find somewhere else to stay. After all they were not legally married as she had learnt from a radio programme. She also told David that he had nothing as all assets were registered in her name. David

approaches you in your capacity as a lawyer with Maboreke and Associates. Prepare a legal opinion for David on how the Zimbabwean courts have dealt with cases of unregistered customary law unions such as he has with Ntokozo in relation to separation and sharing of assets acquired jointly. Your answer should be backed by case law. (20 marks).

### **Question 5**

15 Dakarai Street  
New Mabvuku  
Harare.

Dear Mai Chisamba

Please help me. I am confused. My husband Themba whom I married under Chapter 5:11 in November 2010 says he no longer loves me. He moved out in December 2013 to go and stay with a girlfriend. But even if he has a girlfriend, I still love him. Yesterday I received summons from the High Court. His is asking the court to grant what they are calling a decree of divorce. He wants custody of our son Munashe but he is only three years old. He says that it will be better for our son if he were to stay with him being a boy child. He wants the court to give him 100% share of the house we have in Mabvuku which I also contributed US\$5000 out of the US\$20,000 that it cost. He says I can have the furniture in the home which is now old. He is being cruel Mai Chisamba. On top of that he infected me with HIV. Before we married, we went for an HIV test and we were both negative. And I have not slept with any other man besides him. He told me to leave work because he could afford to look after me. Now he is not even giving me any money. My family is looking after me. My medication is very expensive. I am almost suicidal.

Yours in Christ  
Amanda Gejo

Mai Chisamba refers this letter to you in your capacity as a legal officer with Women and Law In Southern Africa Research and Education Trust. Advise Amanda on the grounds which courts use to grant a decree of divorce, whether or not courts can decline to grant a decree of divorce when one party holds the view that they still love their spouse, custody of children at divorce, how courts divide property at divorce and whether a spouse in the circumstances of Amanda can be awarded post divorce maintenance. (20 marks)

**Question 6**

Maynard Mabiwo is a 37 year old man. He is in a customary law union with Melody Gomo a pharmacist by profession. Maynard lost his job with Olivine industry where he was an engineer in 2012. Since then, he has not been able to find a job. They have three minor children namely Getrude, Victor and Tawanda who are all in primary school. In January 2016, Melody got a job in South Africa with a big pharmacy in Pretoria. She was offered three times the salary that she was earning in Zimbabwe which is equivalent to US\$6000 take home. Maynard makes an average of US\$500 per month from piece jobs. Melody was initially remitting US\$1500 per month for the upkeep of the family but in June 2016 she stopped. She also changed her cell number. Maynard is struggling to pay the fees for the children and also to feed them. He approaches you in your capacity as a lawyer with Beka and partners.

Advise him on the following- whether or not he can sue Melody for maintenance for the children in the Zimbabwean courts based on the fact that she is resident in South Africa and if so, the process that is followed from the application to the enforcement stage; whether or not he can also include his own claim for maintenance and the legal basis for so doing; and how much the court is likely to award to him and the children based on the Gwachiwa formula. ( 20 marks)