

UGANDA MARTYRS UNIVERSITY
NKOZI

UNIVERSITY EXAMINATION
MAY 2023

FACULTY OF LAW

BACHELOR OF LAWS (LLB) YEAR II SEMESTER I FINAL ASSESSMENT
ACADEMIC YEAR- JANUARY 2022 INTAKE

FAMILY LAW 1
LLB 2103

DATE: Friday 19th May, 2023 TIME: 9:30 AM– 1:00 PM

Instructions:

1. This is a closed book exam. Students are not allowed to bring any reading materials into the examination room.
2. Candidates shall attempt a total of **FOUR** questions. **TWO** questions from each section.
3. Question **ONE** is **COMPULSORY**.
4. Each question carries 25 marks.
5. No **names** should be written anywhere on the examination book.
6. Ensure that your **Registration number** is indicated on all pages of the examination answer booklet.
7. Any type of examination malpractice will lead to automatic disqualification
8. Use the exam answer booklet for all your rough work

SECTION A

Question 1 (COMPULSORY)

Abel Kirumira aka Bebe Spice, a 30 year electrician, customarily got married to his college sweetheart, Marietta Karungi Kirumira and they got a child, Noel Kirumira. Marietta continued with her studies and became an accountant. On completion of her studies, Marietta had become so thin that Bebe Spice no longer found her attractive. He then started a relationship with Kaakazi, a curvaceous woman and they got a child. However, Kaakazi refused to wed Bebe Spice under customary law, insisting that she must have a church wedding.

Out of frustration, Marietta began to spend considerable time with her neighbour, John Adam. One day as they were watching football, Marietta fell asleep on the couch in John Adam's living room. The door to the house was not locked and Bebe Spice walked in on them at 1.00am. Marietta insists that they did not have sexual intercourse as she had slept in her tight jeans. Bebe Spice insisted on having sexual intercourse with Marietta in the presence of John Adam "to ascertain the truth of her innocence."

Feeling that his love for Marietta had rekindled, Bebe Spice seeks to resume a normal married life with her. However, Marietta insists on an HIV test because she knows that one of Kaakazi's lovers had died of AIDS. Bebe Spice finds a condom in Marietta's handbag and concludes that she was adulterous: he threatens to kill her. Thereafter Bebe Spice moved out to stay with Kaakazi.

A year later Bebe Spice bought Marietta a Toyota Spacio to take their son Noel to school as a way of asserting his masculinity and dominance. Three years later Bebe Spice filed for divorce on grounds of adultery and constructive desertion. As a catholic, Marietta does not believe in divorce and claims that she has forgiven him.

You have been appointed as a mediator. **Advise the parties. (25 marks)**

Question 2

a) Briefly discuss the concept of dependent domicile. (5 marks)

b) Priscilla Atim and Paul Opiyo contracted a church marriage two years ago at St. Peter's Cathedral in Gulu city. Following the solemnisation of the marriage, the two moved into their new house in Gulu city which was constructed by Priscilla Atim. Unfortunately, since then the couple has failed to have sexual intercourse. Priscilla claims that since her previous relationship, she suffers serious pain in her groin whenever she has sexual intercourse which at times leads to hospitalisation. Paul is extremely frustrated by this, yet as a committed Christian he does not want to engage in any extra-marital affair. He further asserts that if Priscilla does not change her attitude, he will also have to demand for all the bride gifts he took to Oyam during the celebration of their customary marriage two months prior to the church wedding since Priscilla has turned out to be a 'useless woman.' Advise the couple (15 marks)

c) Would your advice be different if Paul Opiyo decides to remain married to Priscilla Atim despite their failure to have sexual intercourse? (5 marks)

Question 3

a) Distinguish between a void and a voidable marriage, giving the grounds for a voidable marriage. (15 marks)

b) Discuss the bars to the grant of a decree of nullity. (10 marks)

SECTION B

Question 5

Farouk is Yusuf Matovu's son. He got married to his secretary Faridah on 29th December 2022, who was also the daughter of his neighbour, Twaha. A week prior to their wedding both Yusuf Matovu and Twaha had expressed their strongest objections to their children's relationship. Faridah is a widow of the late Sheikh Badru Kakungulu, who passed away two months ago in Juba, South Sudan. Farouk just married his fourth wife Safiina on 1st April 2023. Yusuf Matovu is very distressed and has come to you for legal advice on Islamic law.

Yusuf Matovu alleges that the marriage between Farouk and Faridah is invalid because:

- i) The wedding was held in Nairobi, Kenya and not in Kampala where both parties are residing. **(5 marks)**
- ii) Faridah married Farouk without the consent nor the presence of her Wali, Twaha. **(5 marks)**
- iii) Faridah and Farouk lacked capacity to marry. **(5 marks)**
- iv) No mention of mahr (dowry) at all was made during the marriage, neither has Farouk paid anything to Faridah. The couple only relied on natural love and affection. **(5 marks)**
- v) The witnesses to the marriage were Farouk's Christian friend, Mathew Katende and two of Faridah's sisters, Leila and Fauzia. **(5 marks)**

Advise Yusuf Matovu according to Islamic law, dealing with each of the grounds separately.

Question 6

The formalities required for the legal effect and the incidents of a marriage under the Marriage Act Cap 251 and of a Mohammedan marriage under the Marriage and Divorce of Mohammedans Act Cap 252 differ widely. The Marriage Act requires special formalities which are not required by Mohammedan law and the capacity for marrying and the manner of dissolution of such marriages are different." Per Sir Clement De Lestang in *Ayoob v Ayoob* (1968) EA 72, CA at Pg.74.

Critically analyse the above statement focusing on the similarities and differences between an Islamic marriage and a civil or church marriage. (25 marks)

Question 7

With the use of authorities, discuss the following:

- a) Relevancy of the Court's decision in *Julius Rwabinumi v Hope Bahimbisomwe* Supreme Court Civil Appeal No.10 of 2009. (10 marks)
- b) Absolute bars v Discretionary bars to divorce. (10 marks)
- c) The jurisdiction of divorce cases in Uganda. (5 marks)

BEST OF LUCK