

UNIVERSITY OF SWAZILAND
FACULTY OF EDUCATION
DEPARTMENT OF ADULT EDUCATION
DIPLOMA IN ADULT EDUCATION YEAR II
MAIN EXAMINATION, MAY 2018

PAPER TITLE: INTRODUCTION TO FAMILY LAW
COURSE CODE: LAW036
TIME ALLOWED: 3 HRS

INSTRUCTIONS: Write eligibly.

Question 1 is compulsory (Even for supplementary question 1 is compulsory).

Answer four questions in all.

Each question carries 25 marks.

Start each question in a new page.

Citing cases and statutes will carry more marks.

Question 1 (Compulsory)

“...This judgement represents a search for that Guardian knot, the undoing or cutting which frees the woman from any relationship with her former husband, once for all...”- MJ Dlamini JA. Discuss the procedures, if any, for the dissolution of a marriage under Swazi law and Custom? [25 Marks]

Question 2

Sipho *tekaed* Hleziphi under Swazi law and custom in 1998. Hleziphi was smeared with red ochre during the ceremony. Lobola was not paid. Both parties stayed together at Maphalaleni in the Hhohho region where they were allocated a piece of land through *khonta* by the local Chief. They have four children born out of the marriage. Sipho later enrolled at UNISA where he successfully completed his Bachelor of Commerce. He then gets a good paying as a Marketing Manager at Nedbank in Mbabane. He now stays at Dalriach, Mbabane. In 2000 Sipho meets Pearl, a beautiful young lady of Mbabane and they decided to get married at Mbabane under civil rights in community of property. Sipho built a nice big house at Mbabane and accumulated valuable assets. Last month, he failed a cancer operation at a clinic in South Africa. His estate is reported to the Master of the High Court. During the next of kin meeting, Hleziphi produces the marriage certificate under Swazi law and custom. Pearl, on the other hand, pushes for a more share of the estate because she is married in a civil rites marriage. Pearl through his lawyer, approaches the High Court for a direction on the matter. Advise on the prospects of success of Pearl's application on the following issues;

- (a) The legal status of the marriage between Sipho and Pearl? [5 Marks]
- (b) Sipho did not pay *lobola* to the family of Hleziphi. Is the Swazi law and Custom marriage still valid? [10 marks]
- (c) Pearl alleges that Hleziphi left and deserted the matrimonial home at Maphalaleni and decided to stay at Edlangeni her parental homestead. Was the marriage under Swazi law and custom terminated? [5 marks]
- (d) Does the death of Sipho terminate the marriage he had with Hleziphi? [5 marks]

Question 3

Mandla wants to get married to Nosimilo according to civil rites in community of property. Nosimilo's uncle John wants to be the marriage officer of the marriage ceremony. Mandla is however on a study vacation in Italy and requests that the marriage be facilitated in his absence. They had arranged that Mandla be present in the marriage via a Skype video call. This will also be done at a private dwelling at Dalriach, Mbabane on a Saturday at 7.15 p.m.

- (a) Advise the parties of the formal requirements for the marriage to comply with the laws of Swaziland. [15 marks]
- (b) What is the difference between marriage in community of property and marriage out of community of property without the accrual system? [8 marks]
- (c) What are the grounds of divorce for a civil rites marriage in Swaziland? [2 marks]

Question 4

Freddy and Zinhle have a girl child named Zamokuhle. The young girl is eight (8) years old and she resides with her mother at Matsapha. Her mother works in one of the factories around Matsapha and she does not have sufficient money to support her young girl. Freddy is an accountant with one of the big financial institutions around Manzini and earning a very good salary and numerous insurance and investment policies. Freddy is now married to Gugu and they reside at a townhouse at Madonsa in the Manzini region. He also has children who all attend at Ka-Zakhali Primary School. Zamokuhle attends a government school at Matsapha and her mother is struggling to provide her daily necessities including food and clothing. She tried calling Freddy who does not answer her calls, save, for one last week where he said, "You are invading my space". Advise Zinhle on the following;

- (a) Does Freddy have a duty towards the young child as he is not married to Zinhle? [2 marks]
- (b) What is the course of action available to Zinhle? [3 marks]
- (c) What are the necessary details to support her claim above? [4 marks]
- (d) Does a maintenance order come to an end? Is there a room for making an extension of a maintenance order and how? [3 marks]
- (e) If a person refuses to maintain despite a maintenance order, what is the remedy available to the parent of the child in need of maintenance? [3 marks]
- (f) Freddy is due for retirement in November 2018. Does the child have any maintenance claim from his pension? [3 marks]
- (g) Which is the Children's Court for maintenance purposes? [2 marks]
- (h) What are the main considerations which the court will usually consider when making a maintenance order? [5 marks]

Question 5

- (a) Compare the issue of consent under civil rites marriage and a marriage according to Swazi law and custom. In your view, is there consent in a marriage according to Swazi law and custom? [15 marks]
- (b) What is the procedure of the marriage of minors in civil rites marriages? [5 marks]
- (c) What is the difference between sterility and impotence? [3 marks]
- (e) Define *stuprum*? [2 marks]

Question 6

Vusi and Dudu are not married to each other, but they have a 10-year-old girl child named Tebesutfu. The child stays with Dudu at Luyengo. Dudu is a drunkard and a socialite constantly visiting the famous drinking areas around Luyengo. Vusi on the side stays with his newly found girlfriend though he intends to marry soon. He maintains the young child and often gives Dudu a reasonable monthly payment for the expenses of the child including school fees. Vusi now wants custody of the minor child and Dudu on the other does not want to lose her only child. Despite numerous demands by Vusi to have custody of the minor child, Dudu is adamant that 'she is going nowhere'. Advise Vusi on the following;

(a) What course of action is open to him and to which forum? [3 marks]

(b) What is the role of the social welfare department in such kind of applications? [5 marks]

(c) What is the main guiding factor for the courts in determining custody of minor children?

[10 marks]

(d) Define a guardian according to the Act? [2 marks]

(e) What is the role of the guardian towards a minor child? [5marks]

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