



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF
THE DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2023/2024
(AUGUST-DECEMBER, 2023)

LLBK 214: FAMILY LAW

STREAM: Y2 S1

TIME: 2 HOURS

DAY: THURSDAY, 9:00 – 11:00 PM

DATE: 23/11/2023

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE (COMPULSORY) and any other TWO questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

In January 2001, Captain Otieno your big brother Ken's best friend married Wanjiku his high school sweetheart at a colorful wedding, at the Three Angels Seventh Day Adventist Church, Dudley Hill, Nairobi. The wedding was celebrated by the Pastor and President of Central Kenya Conference. Your brother Ken was the couple's best man. The Otienos marriage was blessed with two issues, a boy, Rubi born in December 2011, and a girl, Rubina born in April 2014. The Otienos led a life of married bliss until 2017 when Captain Otieno, an employee of Jamhuri Airways (JA) was promoted to Chief Operations Officer. His new position meant that Captain Otieno would be airborne and away from home for the greater part of the week, as he was in charge of JA's transatlantic route. He would leave his Nairobi home for New York City every Monday evening and return on Friday morning. Thus, immersed in his work, Captain Otieno does not quite remember exactly when things went awry at home. What he remembers is that, a year into his new position, he noticed that his wife had started treating him with contempt and indifference. She no longer took any notice of what he ate, drank, or wore, and they hardly spoke to each other, unless if it was something to do with the children. Any attempt to start a conversation on the part of Captain Otieno would be met with resistance, sarcastic remarks, or outright insults by

his wife Wanjiku. She even stopped accompanying him to Sabbath on Saturdays, a thing that worried Captain Otieno no end, considering that theirs was a devout Seventh Day Adventist family.

Although he was frustrated with the way things were going at home, Captain Otieno who loved his wife dearly, was not overly anxious and blamed his wife's hostility and cruelty to him on boredom and pre-menopausal mood swings. However, things came to a head when on cancellation of his flight on the night of Monday 18th April, 2022, Captain Otieno decided to drive back home, rather than spend the night at the airport hotel as he would often do when his flights were cancelled without notice. It was providential, or so he thought, to have his flight cancelled on 18th April, 2022 which was his wife's birthday. On the way home he bought her a bouquet of red roses and a bottle of expensive champagne.

On arrival at home at 2.00am in the morning, Captain Otieno found his colleague Captain Fisi's car parked outside the house. Thinking that something had happened to his family, Captain Otieno used his spare keys and rushed into their bedroom. He found his wife in bed, dead asleep, but heard the bath running next door. Thinking that his wife had forgotten to turn off the taps, Captain Otieno yanked the bathroom door open and to his shock and horror, found Captain Fisi soaked in a bubble bath, stark naked, and oblivious to the world around him. Strewn on the bathroom floor were used condoms.

In a murderous rage, Captain Otieno took photos of the spectacle in front of him, collected the used condoms, secured the condoms in a paper bag, and ran out of the house. In a daze, he drove straight to Ken's house where you were called and retained on the spot. Captain Otieno's instructions are brief and to the point. "Please help me end this nightmare of a marriage, but don't let her take my children or my home." What is your advice to Captain Otieno?

(30 Marks)

QUESTION TWO

In respect to Civil, Christian and Hindu marriages, the Kenyan Marriage Act, 2014 borrows heavily from English Common Law where marriage, as encapsulated by *Hyde v Hyde*, is a private agreement between one woman and one man to the exclusion of all others. The Act also makes provisions for African Customary Marriages which are, by and large, a communal affair that is signified by protracted negotiations, customary rites, and marriage consideration. The aforementioned fundamental differences notwithstanding, there are significant points of convergence between Christian and African Customary Law marriages in Kenya. Discuss this assertion in the context of the essentials of a valid

marriage, citing relevant constitutional provisions, statutes, case law, and customary law practices. **(20 Marks)**

QUESTION THREE

On 20th December 2021, your childhood friend Nancy, married her high school sweetheart Shem at a colorful wedding at the Kisumu Ndogo Village Nature Resort, in the Karen suburb of the City of Nairobi. The wedding ceremony was officiated by Prophet Panda Mbegu of the Wateule Wapotovu Church of East Africa (WWCEA).

After the wedding, Nancy and Shem proceeded to Mauritius for a two week honeymoon. On the wedding night, Shem failed to “rise to the occasion.” Although she was greatly disappointed, Nancy blamed her newly wedded husband’s inability to consummate their marriage on fatigue. They both had had a hectic time planning and organising their wedding and subsequent honeymoon. Unfortunately, when subsequent attempts to consummate their marriage met with failure every night of the honeymoon invariably due to Shem’s “embarrassing problem,” Nancy’s annoyance turned to alarm and immediately upon the couple’s return to Nairobi from Mauritius, Nancy booked an appointment for them to see a doctor. Shem refused to see the doctor outright. He has since become withdrawn, hostile and abusive to Nancy. To complicate matters, Nancy read in the dailies recently that Prophet Panda Mbegu has been charged and convicted of having knowingly and intentionally on diverse dates between January 2020 and February 2022, celebrated several unions purporting to be marriages without being authorised by the law so to do. Nancy has retained you to deliver her from what she calls ‘a living hell.’ What is your advice to her? **(20 Marks)**

QUESTION FOUR

Section 6 (3) of Kenya’s Matrimonial Property Act, 2013, provides that parties to an intended marriage may enter into a pre-nuptial agreement to determine their property rights.

- a) What is a pre-nuptial agreement? **(2 Marks)**
- b) What are the elements of a valid pre-nuptial agreement? **(10 Marks)**
- c) Citing relevant constitutional and statutory provisions, case law and practice, articulate some of the ills that a pre-nuptial agreement seeks to cure in a subsisting marriage; divorce; and subsequent division of property. **(8 Marks)**

QUESTION FIVE

Wairimu married Wachira ten months ago. In making the decision, Wairimu had been informed by her father that if she did not marry Wachira, she would only receive one instead of six cars as inheritance from her father's estate, and be entitled to one instead of three residential houses, whereas most of the other bequests would remain untouched. At the time she did not own a car, and lived in her father's house. She had heard stories of men in her father's circle who completely disinherited and disowned their daughters for marrying men not approved by them. Also, while she did not think that Wachira was a particularly handsome man, the fact that she was well into her thirties made her decide to get married to him as soon as possible. Wachira has since realised that Wairimu has a biological defect that makes it impossible for her to consummate the marriage. He has also learnt that she might not be able to have any children. After consultations, the couple has agreed to adopt two children to cover up for Wairimu's incapacities. Within the course of their marriage, they have managed to acquire some property together, some of which is registered in their joint names. With the aid of decided cases and statutory provisions and bearing in mind the relevant provisions of the Constitution of Kenya 2010, advise Wairimu whether she can successfully petition for a decree of nullity and the implications of annulling the union on the division of matrimonial property.

(20 Marks)