



**SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2022/2023
(SEPTEMBER-DECEMBER, 2022)**

LLBK 214: FAMILY LAW

STREAM: LLBK Y2 S1

TIME: 2 HOURS

DAY: MONDAY, 3:00 – 5:00 P.M.

DATE: 19/12/2022

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

(a) Beatrice was married to Joshua at the Attorney General's Chambers in accordance with the provisions of the Marriage Act 2014, in June 2016. Beatrice teaches at Asumbi Girls Secondary, school while Joshua is a clinical officer at Asumbi Mission Hospital. Since their marriage Beatrice has refused to have intimate relations with Joshua. She sleeps in the guest room, whenever Joshua is in the matrimonial bedroom. He recently saw some intimate short text message (SMS) on her mobile sent to her by another man. On another occasion he saw her jump into a Mercedes Benz driven by a man he suspects is the one who sent the SMS. He has unsuccessfully tried to ask her to change her behavior. Joshua, who is traumatized, has approached you for advice on the legal remedies available to him.

Advise him.

[10 marks]

(b) The express rule of thumb is that promises to marry are generally not enforceable. In laying down exceptions to the general rule, Denning L.J. in *Shaw v Shaw* [1954] 2 QB. 429 stated that:

Every man who proposes marriage to woman impliedly warrants that he is in a position to marry her, and that he is not himself a married man; and he reaffirms that warranty when he afterwards goes through a formal marriage with her – whether in church or in a registry office. To take the familiar words of the banns of marriage, he warrants that there is no ‘cause or just impediment’ why he should not marry her. Every day of their married life he continues the warranty; he warrants that their marriage was valid and that there was no impediment to it.

In relation to the above, explain four distinct heads upon which an aggrieved party may claim damages for breach of promise to marry. [8 marks]

(c) Samson Omboga is charged with fraud. Mercy Moraa is the key witness in the state case against him. Samson ensures that the State will not be able to use Mercy as a witness against him, and proposes marriage to Mercy knowing that according to our law an accused’s wife is not a competent witness against him in the case of fraud. Mercy is prepared to co-operate with Samson because he has promised her Kshs. 500,000/=. The parties agree that they will not live together as husband and wife, because they do not really wish to be parties to a marriage. They appear before their pastor who solemnizes the marriage.

Samson and Mercy do not live together, and Samson is acquitted on the charge of fraud. Mercy claims half of Samson’s property because the parties were married. Samson alleges, however, that no marriage came into being because neither he nor Mercy really intended to marry. On these grounds, he petitions the court for an order declaring the marriage void.

a) Discuss the legal position. [10 marks]

b) Explain the legal formalities of a customary marriage of any community in Kenya and consequences of the parties’ failure to comply. [10 marks]

QUESTION TWO

- (a) Vernon Gibbs and Tonny Halls is a South African gay couple, having celebrated their same sex-marriage in 1st December 2006 under the Civil Union Act, 2006. The couple learnt through social media that a twelve (12) year old girl has been rescued from a planned early marriage and now being taken care of at OL Maara children's home. The couple further learnt that said home is now experiencing financial crisis and food and other amenities shortage occasioned by covid-19 and hunger crisis that has hit more than half of the counties. Touched by the said news, couple has decided to visit East Africa where it intends to spend ten days in Kenya, as it is interested in adopting the rescued child.

However, the couple believes that ten days will be too short for to complete the adoption process. The couple has approached you to assist it realize its dream of becoming parents by adopting the girl child that is currently under the custody of the Children Welfare Association in Narok.

Write an informed legal opinion on the requirements and procedure of adoption in Kenya. [10 marks]

- (b) A second year law student, Philister recently discovered that she is pregnant. When she told her boyfriend of two years, Rodgers, about it, he distanced himself from her and told her that he had no intention of marrying. She is upset with him because she only became intimate with him after he told her that he wanted a serious relationship which would end in marriage. He no longer comes to her house and has cut off all communication. She feels cheated, and believes that she has a remedy against her boyfriend.

Discuss the possible remedies Philister may pursue against Rodgers under Kenya law. [10 Marks]

QUESTION THREE

- (a) Enock has suddenly become hostile to his seven year wife, June, for reasons best known to him. June has been to seek a job transfer to Mombasa so as to be away from her husband. Their children are aged between the ages of 14-21years old and Enock has refused them to visit, let alone join their mother. He is equally hostile to children and cannot support them even provide for their daily bread. June is the one who caters for their fees as well as their other needs.

June has come to you for legal advice as to what he should do to gain custody of her children?

Advice her. [8 marks]

(b) Distinguish between:

(i) *Lex loci celebrationis* and *lex domicile* [4 marks]

(ii) Leviratic union and widow inheritance [4 marks]

(iii) Void and voidable marriage [4 marks]

QUESTION FOUR

In relation to the Children's Act 2022;

(a) Discuss the rationale behind the enactment [4 marks]

(b) Define the concept best interest of the child [2 marks]

(c) Explain the meaning of parental responsibility and circumstances upon which a person may make an application for extension of parental responsibility. [10 marks]

(d) Highlight on any four role of the Adoption Society of Kenya [4 marks]

QUESTION FIVE

(a) Discuss four reasons why the marriage Act 2014 was enacted and explain whether it has been successful. [8 marks]

(b) Recently the Malawi High court ruled that certificate acquired during the subsistence of a marriage is part of matrimonial property. Critically discuss the said ruling with reference to Matrimonial property 2013. [6 marks]

(c) Explain any four contemporary issues relating to family law in Kenya. [8 marks]