



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

DLAW 0212: FAMILY LAW

STREAM: Y2 S1

TIME: 2 HOURS

DAY: THURSDAY, 3:00 – 5:00 P.M.

DATE: 15/12/2022

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) Kerubo is a Secondary School teacher who has been married for eight years to Dr. Ongubo and is blessed with two daughters, Abbey and Anney aged 6 and 4. She is constantly abused both mentally and physically by her husband. Her husband has also started consorting with Kwangu, a university student who believes that Ongubo will marry her soon. Ongubo is always drunk, rarely home and does not provide for Kerubo and the children. In addition, due to his philandering, Ongubo has contracted a sexually transmitted disease but refuses to get treatment. Kerubo feels that this marriage is unbearable and wants a divorce. She has come to you for advice. Advise her on whether she can get a Divorce. (10 marks)

- b) Kerubo met Ongubo when they were both in Kisii University. Upon graduation, they lived together in a one roomed house in Kisumu Ndogo while

job hunting and doing odd jobs. Kerubo got a job first with the Teachers Service Commission and was able to take out a loan and buy a plot of land at Mwembe, Kisii which was registered in her husband's name. Four years later, Ongubo got a lucrative job with the UN and built a palatial home on this land without receiving any help from Kerubo. Abbey and Anney are now both enrolled at an expensive private school. Kerubo is worried about the property that has been acquired in this marriage and whether she has any rights to it. Advise her on her rights to matrimonial property paying special attention to the doctrine of contribution. (10 marks)

c) Advise on the rights of Dr. Ongubo's and Kerubo's Children (10 marks)

QUESTION TWO

a). "It is impossible to provide a singular definition of marriage. Marriage is whatever the parties to a marriage take it to mean". Evaluate this statement in the context of what marriage means in Kenya. (10 marks)

b). Is marriage a contract or a status? What entry requirements are mandated by the law in Kenya before one may claim to have attained the status of married? (5 Marks)

(c). What reasons may be advanced to rebut an argument for presumption of marriage for a cohabiting couple? (5 marks)

QUESTION THREE

"Law is capable of evolving in the light of changing social, economic and cultural developments. Marriage ... in modern times regarded as a partnership of equals and no longer one in which the wife must be the subservient chattel of the husband" ... Lord Keith in R v. R [1992]1 AC.

Critically examine this quote in the context of matrimonial rights and duties in customary and statutory marriages in Kenya today. (20 marks)

QUESTION FOUR

a) In granting an order of maintenance of children, the Court is required to consider certain factors as per section 94 of the Children's Act (2001). List and explain these factors in detail (8 marks)

b) With the aid of examples, explain the procedure for divorce under African Customary Law. (12 marks)

QUESTION FIVE

a) In some circumstances, the Court may refuse to grant a divorce. Describe these circumstances with the aid of decided cases and statutory provisions.

(12 marks)

b) Clearly draw a distinction between an annulment of marriage and a divorce

(8 marks)