

UNIVERSITY OF FORT HARE
N R MANDELA SCHOOL OF LAW
(East London Campus)

FAMILY LAW
LFM112L

MAIN EXAMINATIONS
NOVEMBER / DECEMBER 2019

Time: 3 Hours
Subject: LFM 112L
Marks: 100

This paper consists of FIVE (5) pages including the cover page

INTERNAL EXAMINER
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INTERNAL EXAMINER
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INSTRUCTIONS

1. Answer all questions
2. Start each question on a new page;
3. Write neatly and comprehensively; and
4. Utilize case law and statutory law to support your answers when required by the question.

QUESTION 1

Choose the correct answer from the following sentences.

1. *In terms of section 3 (2) of the Recognition of the Customary Marriages Act:*
 - a) The parties to a customary marriage are not competent to enter into a religious marriage with another person.
 - b) The parties to a customary marriage are not competent to enter into a civil marriage with another person.
 - c) The parties to a customary marriage are competent to enter into a civil marriage with another person.

2. *In terms of section 10(4) of the Recognition of Customary Marriage's Act and Section 8(2) of the Civil Union's Act 17 of 2006:*
 - a) A person who is a party to a civil marriage or civil union may enter into customary marriage during the subsistence of the civil marriage or civil union.
 - b) A person who is a party to a civil marriage or civil union may not enter into customary marriage during the subsistence of the civil marriage or civil union.
 - c) A person who is a party in a customary marriage may enter into a civil marriage during the subsistence of civil marriage or civil union.

3. *Section 7(1) of the Recognition of Customary Marriages Act applies to:*
 - a) Polygynous customary marriages which were concluded before coming into operation of the Recognition of the Customary Marriages Act.
 - b) Polygynous customary marriages which were concluded after coming into operation of the Recognition of the Customary Marriages Act.
 - c) Monogamous customary marriages which were concluded before coming into operation of the Recognition of the Customary Marriages Act.

4. *In the case of Daniels vs Campbell, the Constitutional Court held that:*
 - a) A surviving spouse in a monogamous Muslim marriage qualifies as a "spouse" and "survivor" in terms of the Intestate Succession Act 81 of 1987 and Maintenance of the Surviving Spouses Act 81 of 19987.
 - b) A surviving spouse in a monogamous customary marriage qualifies as a "spouse" and "survivor" in terms of the Intestate Succession Act 81 of 1987 and Maintenance of the Surviving Spouses Act 81 of 1987.
 - c) A surviving spouse in a polygynous Muslim marriage qualifies as a "spouse" and "survivor" in terms of the Intestate Succession Act 81 of 1987 and Maintenance of the Surviving Spouses Act 81 of 1987.

5. *Although the courts can recognise certain aspects of Hindu Marriage for a certain purpose:*
 - a) They do have the power to declare a Hindu marriage valid or to turn it into a civil marriage.
 - b) They do not have the power to declare the Hindu marriage valid or turn it into a civil marriage.
 - c) They do have the power to declare civil marriage into a Hindu marriage.

6. *If the courts were to recognise the spouses' religious marriages, such recognition:*
 - a) Would turn the Hindu Marriages into a civil marriage
 - b) Would turn Civil Marriage into a Hindu Marriage.
 - c) Would not turn the Hindu Marriage into a civil marriage.

7. *A person who has supplied maintenance to a child:*
 - a) Does not have a right of recourse against the child for any amounts spent.
 - b) Has a right of recourse against the child for any amount spent.
 - c) Has a right to recourse against the child for a certain amount to a limited degree.

8. *In terms of section 21(1) (b) of the Children's Act an unmarried biological father acquires full parental responsibilities and rights in respect of his child if:*
 - a) He consents or successfully applies to be identified as the child's father.
 - b) He stays with the unmarried mother of the child.

- c) He provided support to the mother of the child during her pregnancy.
9. *A child is in need of care and protection if:*
- a) The child does not get maintenance from the biological father.
 - b) If the child abandons school.
 - c) The child displays behaviour which cannot be controlled by his or her parent or care giver.
10. *In determining whether a life partnership came into existence, the following issue is considered to be determinative:*
- a) Whether the life partners had taken a duty of support.
 - b) Whether the life partners have children together.
 - c) Whether the life partners have lived together for a period of more than a year.

[20 Marks]

QUESTION 2

- 2.1 Discuss the term "The Reciprocal Duty of Support", making reference to the relevant legislation and the case law. [10]
- 2.2. Outline briefly any five ways of acquiring parental rights and responsibilities. [10]

[20 Marks]

QUESTION 3

In terms of Section 12 (1) of the Constitution of the Republic of South Africa states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources. Discuss the following:

- 3.1 The conduct which qualifies as a domestic violence. [5]
- 3.2 The process of obtaining a protection order and the test used in granting of Interim Protection Order. [5]
- 3.3 Discuss in details the other rights conferred by the Constitution of the Republic of South Africa to the people which are infringed by the acts of domestic violence.

[10]

[20 Marks]

QUESTION 4

4.1 Distinguish between civil union, customary marriage and religious marriages. Provide requirements for each union. [10]

4.2 The Constitutionality of the Civil Union Act is criticised and challenged on the ground that it offends the rights of the same sex couples. Discuss the constitutionality of Civil Union's Act, making reference to the Constitution of the Republic of South Africa and the relevant case law and legislation. [10]

[20 Marks]

QUESTION 5

Discuss the following terms:-

5.1 The paramountcy of the child's best interests [5]

5.2 Universal Partnership agreement [5]

5.3 Life Partnership Contract [5]

5.4 Adoption [5]

[20 Marks]

TOTAL: 100 MARKS

-END OF EXAMINATION-