



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PRIVATE LAW

EXAMINATION PAPER

COURSE CODE : LLB 303
COURSE TITLE : Family Law
SPECIAL REQUIREMENTS : Relevant pieces of legislation
DURATION : 3 Hours
LEVEL : 3.1
DATE :

30 JUN 2022

INSTRUCTIONS TO CANDIDATES:

1. Answer FOUR questions. Question ONE in section A is compulsory. Answer any THREE questions from section B. Each question carries 25 marks.
2. This is an open book examination and students may bring into the exam own handwritten note into the examination room. No student is allowed to share his/her notes with another.
3. Students are NOT allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things
4. Write legibly
5. Number your answers accordingly
6. Good luck...and remember...*all is fair in love and war*

Section A: Compulsory question

Question 1

Holy and Gamuchirai were married in 2010 and are residents of Mutema City, in Chipasi Province. Holy gave birth to a little girl named Hope in 2013. Gamuchirai had no reason to believe he was not the biological father of Hope and he was named as Hope's father on her birth certificate. They had been married almost two years when Gamu bumped into Holy first husband, quite by accident. It was at a party before a Dynamos FC Vs Manica Diamond game in Sakubva. After a few drinks, and he was told about Orrey the tomcat. Holy was very pregnant at the time, so Gamu said nothing. The marriage was slowly unraveling, and at least Gamu hoped the child would make things perfect. She had an amazing capacity for deceit and Gamu decided to play along, be a proud daddy and all that, but a year later he started gathering evidence. He wasn't sure when he would need it, but he knew the marriage was over. He would leave town every chance that he got—business, hunting, fishing, weekends with the boys, whatever. She never seemed to mind.

Orrey was a strong, handsome loser she'd first slept with at the age of fourteen. He'd been convicted of smuggling mbanje at nineteen, and spent three years in prison while she was having a wonderful time at college, playing cheerleader and seducing classmates, a legendary party girl who also managed to graduate with honours. She married a wealthy gold buyer, and divorced him after two years. Then she enjoyed the single life for a few years until she met and married Gamuchirai, a promising young Engineer who was new to the City. Their courtship had been long on passion and short on planning.

Through college, both marriages, and various short careers, Holy had always kept Orrey nearby. He was an addiction, a strapping, lusty boy she could never get enough of. She knew when she was fourteen that she would never be without Orrey.

Orrey was born and raised at Birchnough Bridge, an old fishing community on a small growth point at the Bay of Save valley. The Growth Point was a working neighbourhood where the immigrants from neighbouring Mozambique landed and the shrimpers lived. He grew up in the streets on the Growth Point, and still had many friends there, one of whom was Taz. It was Taz who had been behind the wheel of the van loaded with marijuana when the Police stopped them. They had awakened Orrey, who'd been asleep with his shotgun amid the thick blocks of

cannabis. Taz and Orrey had used the same lawyer, received the same sentence, and at nineteen been sent away together.

Gamuchirai is easy-going, scruffy in appearance and utterly devoted to Hope. He works as an Engineer, fitting his hours around Holy's school day. The relationship between Gamuchirai and Holy has progressively deteriorated since the birth of Hope. Holy is ambitious and dynamic. Her work, as an Advocate, has made increasing demands on her and has led her to develop a circle of friends whose sophistication makes her feel contempt towards Gamuchirai. This and her anger towards the way he lounges around the house without doing any housework or cleaning has caused her to become withdrawn from Gamuchirai. Increasingly she comes home late without advance warning and has taken to sleeping in the spare room. Gamuchirai has been left to fend for himself and Hope and he has reluctantly come to the conclusion that he and Hope would be happier apart.

Holy filed a petition for dissolution of marriage in 2022 and sought the court designate her as primary residential parent of Hope and to award her child support.

Gamuchirai filed a verified answer and counter-petition acknowledging Hope was the parties' child, and sought sole parental responsibility of Hope, alleging Holy was "an alcoholic" and "prone to blackouts during the marriage."

After Gamuchirai's answer/counter-petition was filed, Orrey, the tomcat, attempted to intervene in the suit claiming he is the biological father of Hope. The court granted the wife's motion to dismiss Orrey, the tomcat, from the suit and denied Orrey's claims and ruled "Gamuchirai is the subject child's legal father, based on presumption of legitimacy. As such, Orrey had no standing to seek parental rights to a child born during an intact marriage".

After more contentious litigation, the court acknowledged that the wife was habitually addicted to alcohol, but reasoned that Holy had shielded Hope from the consequences of her alcohol addiction, and that despite Holy's shortcomings, she was the better of two bad choices to care for this child. As a result, the trial court entered a final judgment on June 14, 2022 granting Holy and Gamuchirai shared parental responsibility of Hope, designated Holy as primary residential parent, and required Gamuchirai to pay Holy \$1,000 per month in child support consistent with Zimbabwean laws. No party, including Orrey, the tomcat, sought appellate review of the final judgment.

A few months after Gamuchirai received the final judgment, he had an exchange with an intoxicated Holy who blabbed about the affair with Orrey and bragged Gamu got “stuck paying for a child that is not his”.

This was the final straw on Gamuchirai even though he fails to take immediate action on his hunch until he comes to you for a consultation on June 20, 2022 and states his case and also tells you that he obtained a paternity test confirming that he is not the biological Father of Hope.

During the consultation, Gamuchirai states he is not current in his child support, but that there are reasons for that.

Gamuchirai is very frustrated that he has been duped and does not want to pay the child support that is owed. Gamuchirai wants a rebate of the child support he has paid and wants to stop all future child support payments. He also wants to maintain his relationship with Hope and have visitation with her based on the relationship he has developed under the “false pretense” (as he describes) that he was Hope’s biological Father.

Gamuchirai is also concerned about Orrey the tomcat and what kind of trouble Orrey can cause for him in the future. Considering his violent and crooked past.

He also told you that he has also consulted his uncle who is a Cabinet Minister in government who advised him that it is the state which has the responsibility to see to it that all the rights of children are respected. Gamuchirai inform you that Ministers uncle further stated that, “Yes, we’re gracious enough to allow your kids to reside with you and for you to make lots of the decisions in their day-to-day lives, but when the rubber meets the road, we just want you to remember that the Almighty State straight-up owns your kids and will do with them as we will,” he said. “We make all the big decisions, and you have pretty much zero say when it comes right down to it. Just keep that in mind and stay in your place.” **(Names, characters, places and incidents used here are fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.)**

With reference to relevant case law, fully advise Gamuchirai.

[25 marks]

Section B answer ANY three questions.

Question 2

"Whether or not we conceive the family as nuclear or extended, or indeed as a household, it seems that the essential meaning of the term is best understood by reference to the functions it performs in any community at a given historical moment".

Evaluate the accuracy of this statement, in evaluating the statement, assess the role of the law in defining accepted family forms and in constructing roles, obligations and rights of persons defined as part of the family." [25 marks]

Question 3

"The paradox ...is that even when children are constructed as rights holders, it is difficult for them to assert their rights. The reasons are practical, political and legal". K O'Donovan, Family matters, Pluto Press, at page 80.

To what extent is this observation true and in what ways, if any does this affect both the conceptualization and implementation of children's rights enshrined in the UN convention on the rights of the child? [25 Marks]

Question 4

In modern law, whether or not access to a minor child is granted to its noncustodial father does not depend on whether or not the child was born out of wedlock. Instead, in each case, the decision will be made on the basis of a consideration of what is in the child's welfare - per Sandura J (Dissenting) in Cruth vs Emmanuel 1999 (1) ZLR 7. Assess the validity of this assertion with reference to the concept of best interests of the child in custody, guardianship and access matters. [25 Marks]

Question 5

The terms 'custody' and 'access' have been replaced with the terms 'care' and 'contact'. Although the ambit of each of the new terms is not precisely the same as custody and access they now replace them. With aid of decided cases analyse the importance of this differentiation if any? [25 marks]

Question 6

'...the principles I applied are anachronistic and had outlived their raison d'être and that there was no sound jurisprudential basis for holding that the rights that a wife has to the matrimonial estate during the lifetime of her husband have inferior content to her rights upon divorce or the death of her husband...', as per Makarau J (as she then was) in *Muswere Godfrey vs Gertrude Rudo Makanza* HH16-2005. Outline and discuss the rights of a civil marriage wife under family law to the matrimonial home registered in the sole name of her husband. [25 marks]

Question 7

Despite the passing of the Marriage Act by Parliament, the existing laws regulating marriages in Zimbabwe is full of contradictions and opportunities for inequality and unfairness. Discuss. [25 marks]

Question 8

"Entrusting the courts with a wide discretion inevitable leads to indefinite legal rights and uncertainty in law". With aid of Zimbabwe case law authorities, critical examine the statement in relation to the property rights of spouses at divorce. [25 marks]

******End of Examination******