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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 : 13 NOV 2019

INSTRUCTIONS TO CANDIDATES:

1. Answer two questions from section A and all questions in section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation and the 2013 Zimbabwean Constitution.
3. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
4. Number your answers accordingly

Answer two questions from this section

Question 1

With reference to case law, discuss the consideration that the courts take into account in distributing matrimonial property at the dissolution of a registered marriage. [25 marks]

Question 2

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 3

“The term ‘family’ is rarely even defined in both domestic laws and in human rights treaties except by implication and even then the definitions often depend on the purpose to which a definition is sought and is being implied.” Discuss this statement and explain any, why a definition of the term is often avoided. [25 marks]

Section B

Answer all questions in this section

Question 4

Lyn is 25 year old devout Christian who is in love with Ronald. They attend the same church. Lyn is the leader of the praise and worship team. Lyn and Ronald had been in love for 3 years. They had an engagement in June 2018. They are therefore preparing for their wedding which is due to take place in March 2019. Their church hosted a cross over service on New Year’s Eve where famous preachers were invited. One of the preachers preached about unequal yoking and the fact that people should choose their partners carefully. After the sermon, the preacher had an altar call

where he extorted those who wanted a fresh start to come forward and confess before God. Ronald came at the front and took the microphone and stated as follows, "I want to start my new life today. I confess that I have been in unequal yoking with my girlfriend Lyn. Lyn's parents are traditional healers and I am a pastor's child. The spirit is telling me that we will not find any joy in our lives if we are to marry. I therefore cancel the engagement" Lyn is devastated about the cancellation of the engagement. She wants to claim for breach of promise to marry and has approached you for legal advice .Advise her appropriately. [25 marks]

Question 5

Rue and the Rova appeared before a marriage officer on the 25th of December 2017. The marriage officer asked Rova if he had married before since Rova was older than Rue. Rova indicated that indeed he had been married but had divorced. Upon receiving such information, the marriage officer was hesitant to proceed with the marriage. He indicated that since the parties had already spend a lot of money in preparation for a wedding, the ceremony will proceed. He indicated that he would however only preside over a church blessing where the parties will put on their wedding attires and perform wedding dances as planned. He would not issue them with a marriage certificate until Rova avails to him proof that indeed he was divorced. The marriage officer's fear was that Rova was still married. People celebrated at this event such that even relatives from Mutawatawa did not even knew that this was a church blessing. During the photo session, the photographer advised that they should pose with a marriage certificate. The couple went to negotiate with the marriage officer to just issue them with the marriage certificate. The marriage officer then said since they had a marriage license, he can just make them to take wedding vows and sign the certificate which will only be given to the parties once Rova submits proof of divorce to his first wife. He proceeds to issue the parties with a marriage certificate for purposes of just posing for photographs. He requested the parties to return the certificate once the session is over. He however forgot to collect the certificate from the couple since he left the venue in a hurry after receiving a phone call that his child was admitted in hospital. Rue and Rova proceeds to go on a two week honeymoon in Mauritius. When they returned home, Rue discovered that Rova had impregnated another lady whom they found waiting for them at Rova's apartment where they wanted to settle. Rue is extremely angry and wants to file for divorce. Rova is not even bothered by the threats of divorce. He is of the opinion that there is no valid marriage since he did not present

proof to the marriage officer that he was a divorcee. His opinion is also based on the fact that the marriage was not even registered at the Registry office. Rue is hugely disappointed by this and want to know if he can file for divorce or annulment of the marriage.

Advise her on the position of the law pertaining to both options. **[25 marks]**

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