



**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

**FAMILY LAW**

**LLB 303**

**CONVENTIONAL EXAMINATION 2018**

**THREE HOURS**

**4 DECEMBER 2018**

**INSTRUCTIONS**

- (i) Answer two questions from each section. Each question carries 25 marks.
- (ii) Students may bring into the exam un-annotated and clean texts of applicable legislation and the 2013 Zimbabwean Constitution.
- (iii) Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.

Number your answers accordingly

## **Section A Answer two questions from this Section**

### **Question 1**

“What is clear from the facts of this case is that this was an ordinary marriage relationship. The parties were not involved in a commercial activity for the purposes of profit. Even if the plaintiff’s claims were accepted in full, the services rendered by her did not go beyond those ordinarily expected of a wife in her situation. In this situation, there can be no question of a tacit universal partnership”. *Mtuda v Ndudzo 2000(1) ZLR 710(H) @ page 716H.*

Discuss how the common law concept of ‘tacit universal partnership’ has been interpreted by the Zimbabwean judiciary with respect to division of “matrimonial property” at the dissolution of an unregistered customary law union. [25 marks]

### **Question 2**

The delicts of seduction and adultery have no place in the modern world and should be outlawed. Discuss this assertion, using common law and case law. [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 why a definition of the term is often avoided. [25 marks]

## **Section B**

### **Answer all questions in this section**

### **Question 4**

Ms Stones is a female lecturer at ZOU. She has been in love with her boyfriend Tom for four years until the period she fell pregnant. In January 2018, the boyfriend proposed love to her which she did not readily accept because she was apprehensive that the relationship might not last. They befriended and visited each other and ultimately fell in love. Tom made a marriage proposal to her when she refused to have sexual intercourse with him because she was not using contraceptives. Tom then told her that she did not need to use contraceptives because he wanted to marry her and wanted to plan a child with her. He subsequently repeated the promise to marry her when he introduced her to his spiritual healer. He introduced her to the spiritual healer as his “prospective wife” and thereafter they consulted the spiritual healer together on numerous occasions. Tom further told her that his intention was not to hurt her feelings but to make her happy. As a result of the promise, Ms Stones had sexual intercourse with Tom and continued to indulge in sexual intercourse with him as they were planning to have a child. They spent several nights at the Tom’s house where they indulged in sexual intercourse every night in January 2018, to make sure that she conceives. When Tom was informed about the conception he, to her surprise, became unhappy. Two days after discussing the conception with him she visited Tom at his house and caught him

in the act with another woman. After this incident the Tom repeatedly told her that he no longer loved her and was not going to marry her because he is in love with another woman with whom he cohabits. Ms Stones has approached you for advice and wish to make the following claims. Advise her on the prospects of success on the following claims that she has brought before the court.

- a) Breach of promise to marry [ 10 marks]
- b) Seduction damages and lying in expenses [15 marks]

### Question 5

Shumi and Tami have been staying together for the past ten years. Tami paid bride price but due to economic challenges in Zimbabwe, the young couple never got an opportunity to have their dream white wedding. They did not register their marriage in the hope that one day they will have money to fund their big day. Their marriage was going on well until late last year when Tami was caught pants down with another woman. Shami became so angry that she moved out of the house with their 9 year old daughter Ashley. Tami went to Shami's parents and was informed that Shami had moved to the United Kingdom with the child. After begging for a long time, Shami's mother gave him Shami's phone number. When she was called, Shami indicated that she doesn't want anything to do with Tami because the child was not even his. She further stated that she thinks that the child now has a chance to a better life in the United Kingdom than in Zimbabwe. Upon further negotiations, Shami agreed that the child can come back to Zimbabwe on school holidays but will only stay with Shami's mother. Shami stated that Tami will only be allowed to see the child every Saturday for two hours. Shami stated that she has only agreed to give him access to the child not because he is father but the child had developed a bond with him. Ashley has been asking for Tami since Shami left their matrimonial home. Tami believes that he is the biological father of the child and want to have custody. He does not want the grandmother to stay with Ashley because the grandmother practices African traditional religion which Tami does not believe in as a Christian. Tami is really worried about the welfare of Ashley and want to make a court application for custody before the school opens so that the child is not removed from Zimbabwe.

- a) Advise Tami on the position of the law in this case [15 marks]
- b) what action can Tami take to protect his rights as the father.[10 marks]

### Question 6

Diana is married to Allan in terms of the Marriage Act 5:11. There are two minor children of the marriage namely Blessing aged 14 and Ropa aged 16. Both children are female. Diana and Allan reside in Borrowdale. They purchased this house in 2004 through a mortgage. The mortgage payments were directly deducted from Allan's salary. Since the mortgage payments constituted three quarters of Allan's salary, Diana was responsible for paying water and electricity bills. She was also responsible for payment of their children's school fees for 5 years until Allan got another well-paying job as a CEO of ZEGU. As a result of the new job which had lucrative packages, Allan started cheating on Diana with different women. Allan would go on international trips with several women. Diana confronted Allan about this. Allan bluntly told her that he feels that Diana is no longer a suitable spouse due to the status he now had. He now wanted a young wife and a

“yellow bone”. Diana is planning on filing for divorce but she is afraid because she heard from women at church that if you file for divorce you will not get anything. Diana’s salary is no longer adequate to support her and the children. Due to high exchange rates at the parallel market her salary is now less than USD 50 per month. Meanwhile, Allan’s employer has increased his salary and also awarded him a hardship allowance which is paid in US dollars to cushion him from the hard economic situation in the country. Diana has approached you in the legal aid clinic and would like to know whether she can claim the following if she decides to file for divorce.

- a) Maintenance *pendete lite* for herself and the children [10 marks]
- b) 50% share of the matrimonial home [15 marks]