

14:00

03/11/2008

F: HALL

EXAMS OFFICE  
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS1005

Course topic names(s)  
Paper Number & title

PERSONS AND FAMILY LAW

Examination / Test\* to be held during  
month(s) of (\*delete as applicable)

OCTOBER/NOVEMBER 2008

Year of study  
(Art & Science leave blank)

Degrees / Diplomas for which  
this course is prescribed  
(BSc (Eng) should indicate which branch)

LLB

Faculty/ies presenting candidates

COMMERCE, LAW AND  
MANAGEMENT

Internal examiner(s)  
and telephone extension  
number(s)

MR K MALUNGA (EXT 78446)  
PROF E BONTHUYS (EXT 78427)  
MR G JEPHSON  
PROF T MOSIKATSANA (X 78475)

External examiner(s)

MS E COETZEE

Special materials required (graph/music/drawing  
paper maps, diagrams, tables, computer cards, etc)

Time allowance

Course no: LAWS1005 Hours: TWO

Instructions to candidates  
Examiners may wish to use this space to indicate,  
inter alia,  
the contribution made by this  
examination or test towards the year mark, if  
appropriate

1. ANSWER ALL QUESTIONS. THERE IS NO CHOICE.
2. WRITE THE NAME OF YOUR LECTURER ON YOUR SCRIPT.
3. THIS EXAM COUNTS FOR 50% OF THE FINAL MARK.

**Internal Examiners or Heads of  
Departments are requested to sign  
the declaration overleaf**

## QUESTION 1

Lionel and Rachel meet and fall in love at Wits in July 1990, where they both study architecture. Three weeks later they married in the Braamfontein synagogue without concluding an ante-nuptial contract. Rachel's mother, Diane, is disappointed. She had hoped that Rachel would marry David, the son of an old school friend. She never has a good word to say about Lionel. She criticises his hairstyle, his job and the way he eats spaghetti.

Their first child, Neville, is born nine months after the wedding and the second, Neil, is already on the way.

One year after the wedding, Diane moves in with Rachel and Lionel. Lionel isn't happy with the arrangement. He only agrees because Rachel needs all the help she can get.

Rachel continues with her studies after Neville is born. However, after Neil's birth, the family can no longer afford to pay tuition fees for both Lionel and Rachel.

Rachel starts work as a professional assistant at a firm of architects, while Diane looks after the two children.

Rachel inherits a house worth R500 000 from her late father. His will contains a clause which stipulates that the house is not to be shared with Lionel.

For the first five years of marriage all goes well. Lionel embarks upon a very successful career as an architect. The family buys a large house in an expensive suburb. Lionel becomes increasingly antagonistic towards Diane, his mother-in-law. He feels that the children are older and that Diane no longer needs to live with them. Rachel is torn between loyalties to her mother and her husband. As a result of these conflicting feelings, Rachel becomes increasingly dependent on the painkillers her doctor has prescribed for her recurring headaches.

Late one evening an argument breaks out between Lionel and Rachel. Lionel tries to persuade Rachel to seek treatment for her addiction by going to a drug rehabilitation centre. When she refuses, Lionel raises the issue of Diane again. He gives Rachel an ultimatum that, either Diane leaves their household, or that he leaves.

Angered by what she perceives as Lionel's irrational behaviour, Rachel jumps into the car and drives off into the night. She drives over a stop street and collides with another vehicle. The driver of the other vehicle Stanley, sustains serious back injuries. He claims R500 000 damages from Rachel.

In distress about the accident, Lionel's relationship with her mother, and her dependence on the headache tablets, Rachel turns to her boss, Michael, for advice and emotional support. This soon develops into a passionate affair and three months after the accident, Rachel leaves the marital home. She leaves a message on the kitchen counter informing the rest of the household that she has finally found the love which she always wanted and that she will call on Monday to see the children.

Their total assets are as follows:

- (1) Lionel owns an old VW beetle that he brought into the marriage worth R3 500.
- (2) Both spouses owe the university R20 000 in fees.

- (3) The house that Rachel inherited is worth R1 million.
- (4) The house in which the family lives is worth R2 million.
- (5) Lionel has shares in a construction company, worth R1 million.

You are an attorney. Advise Lionel on the following:

- (a) whether he is also liable for the R500 000 damages in respect of the accident that was negligently caused by Rachel.  
[7]
- (b) Can Lionel obtain a divorce from Rachel? If so what would he have to prove?  
[3]
- (c) In the event that a divorce is granted, how will Lionel and Rachel's property be divided between them under their chosen matrimonial property regime?  
[5]
- (d) Is the court likely to order forfeiture of the benefits of the marriage?  
[5]
- (e) Assume that Rachel wants to institute a divorce, but that Lionel refuses to divorce her. He also refuses to give her the *get*, which upsets Rachel, because she is a devout Jew, who wishes to marry Michael. Advise Rachel of any legal remedies that she may have to obtain a *get* from Lionel.  
[5]

**[TOTAL marks for this question: 25]**

## **QUESTION 2**

Jim and Zanele have been married since 1999. In 2003, they have a daughter called Fatima. Initially, Jim is a kind and loving husband and father. However, in 2006, Jim engages in extra-marital affairs with various women, including sex workers. As a result of his infidelity, Jim contracts HIV.

Jim works for a large company as an IT consultant. He is the sole breadwinner. Zanele, is unemployed. She is responsible for maintaining the household. She cooks all his meals, cleans the family home and looks after Fatima.

As a result of his extra-marital affairs, Jim spends less money on the maintenance of his family. He ultimately refuses to give Zanele money to buy food and household necessities.

Jim also calls Zanele lazy and fat. He tells Fatima that she cannot be his daughter as she has pointy ears. Jim often brandishes a firearm during these outbursts.

One night, Jim tries to rape Zanele. She calls the police to come and assist her. When they arrive at the scene, Jim refuses the police entry to the property, stating that they cannot get involved in a private issue.

Write a comprehensive note on the issues raised by the above factual scenario with regard to the Domestic Violence Act 116 of 1998 and the challenges faced by vulnerable groups within the family with regard to HIV/AIDS.

Would your answer be any different if the parties were in a same sex relationship?

[15]

[Total marks for this question: 15]

### **QUESTION 3**

Discuss the influence of the Constitution in the recognition of Muslim marriages. In the course of your answer refer to relevant legislation and case law.

[10]

[Total marks for this question: 10]

[TOTAL marks for this paper: 50]

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