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**University of the Witwatersrand, Johannesburg**

Course or topic No(s)

**LAWS 1005**

Course topic names(s)  
Paper Number & title

**LAW OF PERSONS AND  
FAMILY: FAMILY  
COMPONENT**

Test to be  
held during month(s) of

**NOVEMBER 2009**

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)

**PROF E BONTHUYS (78427)  
MS D COLGAN  
MR J NOOR MOHAMED  
MR K MALUNGA  
PROF T MOSIKATSANA**

External examiner(s)

**Ms E Coetzee**  
University of Johannesburg

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

Time allowance

Course no: **LAWS 1005** Hours: **2**

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 THE QUESTIONS**
- 2. WRITE THE NAME OF YOUR LECTURER ON YOUR SCRIPT**
- 3. THIS PAPER COUNTS FOR 35% OF THE FINAL MARK FOR LAWS 1005**

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

## ANSWER ALL THE QUESTIONS

### Question 1

Mr and Mrs Crawford, a white married couple, who are citizens of the United States of America (USA), are fostering a black South African infant, Tumelo. The Crawfords met Tumelo at a home for abandoned children. Tumelo's parents are both dead. Tumelo was left with her aunt who abused her physically and emotionally.

The Crawfords, seek to adopt Tumelo, but they do not know South African adoption law and they also do not intend to go through the adoption procedures in the South African courts. They intend to bring an application in the Southern Gauteng High Court, for sole custody and guardianship of Tumelo, with the aim of ultimately initiating adoption proceedings in the USA.

They seek your advice on the following aspects of SA adoption law:

(a) The definition of a child who may be adopted and whether Tumelo is adoptable. [5 marks]

(b) With reference to the relevant legislation and case law, comment on the appropriateness of the Crawfords' intended plan of obtaining sole custody and guardianship of Tumelo in South African courts and adopting her into a white family in the USA. Which procedures would you recommend and what are the advantages and disadvantages to trans-racial adoptions?

[10 marks]

**Total for question 1 [15]**

### Question 2

Xolani and Zanele were married to each other in 1996. Before getting married, they consulted Zanele's younger brother Bongani, who had just in that year started to practise as an attorney, to draw up their antenuptial contract. Xolani and Zanele wanted the accrual system to apply to their marriage. Bongani advised the couple that they did not need to conclude an antenuptial contract, since the accrual system was the residual matrimonial property regime, which would apply if the

parties did not conclude an antenuptial contract. Following this advice, the couple therefore got married without an antenuptial contract.

After three years of marriage, Xolani was working for BA Bank, and Zanele had decided to start her own clothing manufacturing firm. She consulted a lawyer, Yasmin, about the legal processes involved in setting up the business. Upon hearing that Xolani and Zanele were married without an antenuptial contract, Yasmin told Zanele that she was married in community of property and that she should think about changing the property regime which applied to her marriage, in order to protect Xolani and any children they may have in future. Zanele is astonished, since she had always thought that she was married according to the accrual system.

- (a) Which matrimonial property regime really applies to Zanele's and Xolani's marriage? Advise the couple about the most advantageous matrimonial property regime for couples where one or both spouses own their own businesses.

[5]

- (b) For this part of the question, assume that Xolani and Zanele are NOT married according to the accrual system. Can they change their matrimonial property regime to the accrual system? What steps do they have to take and what do they need to prove to do this?

[10]

- (c) For this part of the question assume that Xolani and Zanele successfully changed the property regime of their marriage in 1999 and that they are now married according to the accrual system. In 1999 when the accrual system was first applied to their marriage, Xolani had R50 000 in his savings account, while Zanele had debts of R20 000.

Ten years later, Xolani has become the manager of BA Bank's branch in Braamfontein. He earns an excellent salary every month and owns a sports car valued at R300 000. The couple's home, valued at R1 million is registered as belonging to Xolani. He also has shares worth R500 000 and a house in Bryanston, valued at R10 million, which he had inherited from his uncle.

Zanele's business has also prospered. It has assets internationally, valued at R5 million. She has bought a holiday home in Durban, valued at R2 million and also owns a sports car worth R500 000. Her business currently has liabilities (debts) of R1 million.

Despite their material prosperity, however, Zanele and Xolani have drifted apart. For the past three years they have no longer shared a bedroom and Xolani has started a relationship with one of BA Bank's female employees. Both spouses agree that they wish to get divorced and consult you about the division of their assets.

Advise them how a court would be likely to divide their assets. Since 1999 the value of the Rand has halved.

[10]

**Total for question 2: [25]**

### **Question 3**

South Africans disagree fundamentally on the issue of same sex marriage. On the one hand religious and traditional groups wish to protect the institution of heterosexual marriage, while lesbian and gay activists insist on their rights to be treated equally and not to be discriminated against on the basis of their sexual orientation. Does the Civil Union Act 17 of 2006 represent "an unsatisfactory compromise between these forces or ... a genuine step forward for South African family law?"

Critically discuss this statement, supporting your arguments by referring to the provisions of the Civil Union Act.

**Total for question 3 [10]**

**[TOTAL MARKS 50]**

