

14:00

02/11/10

HALL 29

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 2010

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)

MS W DOMINGO Ext 78425  
MS D COLGAN Ext 78418  
MS R CAVALHEIRA  
MR J KUEBLER

External examiner(s)

DR A BARRATT

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

Time allowance

Course no: LAWS1005 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.

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

**ANSWER ALL QUESTIONS. THERE IS NO CHOICE OF QUESTIONS**

**QUESTION ONE**

Luke and Daisy married each other out of community of property in March 1990. They did not exclude the accrual system in their ante-nuptial contract. In terms of the ante-nuptial contract the net value of Luke's estate at the commencement of the marriage is R6 000, and the net value of Daisy's estate is R50 000.

Luke is an artist and Daisy is a successful international lawyer. In December 2009 Daisy is offered a lucrative job in the United Kingdom (UK). Luke encourages Daisy to take the job offer and the couple then decides to immigrate to the UK.

Luke telephones his best friend, Carl who lives in the UK to tell him the good news. Carl offered to help Luke and Daisy find an apartment. In January 2010, Luke and Daisy make their first trip to the UK. Carl meets up with them and helps them settle in. Luke then returns to South Africa to 'wind up their affairs.' Carl promises Luke that he will take good care of Daisy. While in South Africa, Luke has been in close contact with both Daisy and Carl. Carl continually assures Luke that Daisy is doing well and enjoying life in the UK.

At the end of April 2010, Luke calls Daisy and tells her, he will be with her soon, to begin the new chapter in their lives in the UK. Daisy informs Luke he should no longer come to the UK because she has fallen head over heels in love with his best friend Carl and she wants a divorce. Luke who has been married to Daisy for 20 years is shocked by the news. He feels angry and betrayed by his best friend, Carl and his wife.

Luke and Daisy's total assets in 2010 are as follows:

Luke has a net estate of R500 000 which includes:

- i. During the marriage, Luke inherited a small house in Ridgeway from his father. In his will Luke's father specifically states that the house should be excluded from Luke's joint estate. It has always been his dream to own a vintage Harley Davidson motor cycle, so he sells the house in order to raise funds for this purpose. Luke's Harley Davidson is valued at R140 000;
- ii. R30 000 which was donated by his Aunt Mona Lisa, to help him pursue his passionate artistic career.

Daisy has a net estate of R2000 000 which includes:

- i. Personal savings in the amount of R500 000.
- ii. In January 2009, Daisy was knocked down by a taxi in Rivonia Road, Sandton and spent a month in hospital. Upon successfully suing the Taxi company, she was awarded damages in the sum of R50 000. (R40 000 for hospital expenses and R 10 000 for pain and suffering). Daisy still has to pay the R 40 000 for hospital expenses;
- iii. A car worth R1000 000; and
- iv. Shares worth R490 000.

The weighted average of the consumer price index during the period 1990 to 2010 is in the ratio of 1:3.

**ANSWER ALL OF THE FOLLOWING QUESTIONS.**

- a) Can Luke institute a delictual claim against Carl?  
(5 marks)
- b) Can Daisy file for divorce, and if so, on what grounds?  
(5 marks)
- c) In the event that a divorce is granted, how will Luke and Daisy's estate be divided between them under their chosen matrimonial property regime?  
(15 marks)
- d) Is the court likely to order forfeiture of benefits of the marriage?  
(5 marks)

**Total marks for Question one: 30**

**QUESTION TWO**

Critically discuss the usefulness of section 5A of the Divorce Act No 70 of 1979 in the context of Jewish marriages. Include relevant case law in your answer.

(10 marks)

**QUESTION THREE**

Critically analyse and discuss the effective application and use of the Domestic Violence Act in South Africa today. In your answer refer to the numerous domestic violence challenges that confront certain South African communities, making specific reference to the attitudes and perceptions that male youths may hold with respect to women and their equality.

(10 marks)

**TOTAL MARKS FOR QUESTION PAPER: 50**

