

PVL102-R

October/November 2006

FAMILY LAW

Duration : 2 Hours

100 Marks

EXAMINERS :**FIRST :**

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This paper consists of 7 pages.

IMPORTANT INFORMATION: PLEASE READ THIS PARAGRAPH CAREFULLY.

YOU MUST ANSWER ALL THE QUESTIONS. Please ensure that you number your answers correctly. If you do not know the answer to a particular question, please write down the number of the question in your exam script and leave a few lines open before beginning the next answer.

QUESTION 1

Indicate whether the following statements are true or false:

PLEASE DO NOT WRITE THE CORRECT ANSWER ON THE EXAMINATION PAPER AND ATTACH IT TO YOUR ANSWER SCRIPT BECAUSE IT MIGHT GET LOST.

- (a) A contract of engagement concluded by post comes into existence at the place where and moment when the letter of acceptance is mailed. (1)
- (b) The consequence of a mistake about a material aspect of an engagement is that the engagement is voidable at the instance of the party who was misled. (1)
- (c) Minors under the age of puberty are totally incapable of entering into a marriage. (1)
- (d) When a minor enters into an antenuptial contract, his/her parents or guardian must sign the contract on his/her behalf. (1)

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- (e) An informal antenuptial contract is valid only as between the parties. (1)
- (f) The marriage of a 21-year-old man and a 23-year-old woman, which was solemnized in accordance with the prescribed marriage formula on Durban's main beach by a competent marriage officer in the presence of the required witnesses, is valid. (1)
- (g) A woman may conclude a civil marriage with her father's brother. (1)
- (h) According to the decision in *Honey v Honey* 1992 (3) SA 609 (W), spouses can change their matrimonial property system as between themselves without the court's intervention. (1)
- (i) In *Daniels v Campbell* 2004 (7) BCLR 735 (CC) the constitutional court held that Muslim marriages should be fully recognised as long as they are monogamous. (1)
- (j) For purposes of the Domestic Violence Act 116 of 1998 the term "marriage" refers to a marriage according to any law, custom or religion. (1)
- (k) For a forfeiture order to be granted, it is not necessary that all the factors mentioned in section 9 of the Divorce Act 70 of 1979 must be present. (1)
- (l) In *Bezuidenhout v Bezuidenhout* 2005 (2) SA 187 (SCA) the supreme court of appeal held that our courts are entitled as a matter of course to divide the combined net assets of the parties equally between them when granting a redistribution order. (1)
- [12]

QUESTION 2

Explain the difference between a void marriage and a putative marriage with reference to the definitions of the two terms and the consequences of the two types of marriages. [12]

QUESTION 3

Answer the following question by, in each case, writing only the correct answer in your answer script, for example: (a) 1.

PLEASE DO NOT MARK THE CORRECT ANSWER ON THE EXAMINATION PAPER AND ATTACH IT TO YOUR ANSWER SCRIPT AS IT MAY GET LOST.

- (a) Mr and Mrs Venter are married in community of property. Which one of the following assets or amounts indeed forms part of their joint estate?
- [1] R10 000 which Mrs Venter recovered as damages after her neighbour, Mr X, crashed into her motor vehicle
 - [2] R8 000 which Mrs Venter recovered as satisfaction from Mr X as a result of the pain and suffering she suffered after the accident
 - [3] Mr and Mrs Venter's matrimonial home which Mrs Venter inherited from her father on condition that it should go to her son upon her death
 - [4] the engagement ring which Mr Venter gave to Mrs Venter before their marriage (2)
- (b) Mr and Mrs Sithole are married in community of property. For which one of the transactions mentioned below does Mr Sithole require Mrs Sithole's prior written consent attested by two competent witnesses?
- [1] Mr Sithole wishes to withdraw money credited to the name of Mrs Sithole in an account in a banking institution.
 - [2] Mr Sithole registers a servitude over a piece of land which forms part of his and Mrs Sithole's joint estate.
 - [3] Mr Sithole wishes to conclude a contract with a third party for the alienation of a holiday home which forms part of his and Mrs Sithole's joint estate.
 - [4] Mr Sithole wishes to conclude a transaction on the stock exchange concerning listed securities. (2)
- (c) Mr and Mrs Singh are married in community of property. Which remedy is available to Mrs Singh if Mr Singh, without her knowledge, sold her expensive jewellery below their market value in an effort to gather enough money to pay the parties' bond installment in respect of the matrimonial home?
- [1] the common-law interdict
 - [2] the common-law right of recourse upon dissolution of the joint estate
 - [3] the statutory right to adjustment in terms of section 15(9)(b) of the Matrimonial Property Act 88 of 1984 upon dissolution of the joint estate
 - [4] the *actio Pauliana utilis* (2)

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(d) Which one of the following cases does not deal with a postnuptial change of spouses' matrimonial property system?

[1] *Ex parte Oosthuizen* 1990 (4) SA 15 (E)

[2] *Ex parte Burger* 1995 (1) SA 140 (D)

[3] *Ex parte Dow* 1987 (3) SA 829 (D)

[4] *Ex parte Krös* 1986 (1) SA 642 (NC) (2)

(e) Someone who assists a person in litigation because the person does not have capacity to litigate, is known as:

[1] a curator dative

[2] a curator nominate

[3] an assumed curator

[4] a *curator/curatrix ad litem* (2)

[10]

QUESTION 4

A few years ago Mr and Mrs January married out of community of property with application of the accrual system. Mr January is a fanatic gambler. He spends most of his income on his gambling and has also built up large gambling debts. In an effort to pay his gambling debts he starts selling his assets without consulting Mrs January. Mrs January has no assets of her own. When she discovers that assets are disappearing from the matrimonial home she confronts Mr January. Mr January tells Mrs January that it is none of her business what he does with his own assets. Fully discuss the statutory remedy which is available to Mrs January under these circumstances. [8]

QUESTION 5

In 1996 Mr and Mrs Diego were married in South Africa out of community of property with application of the accrual system, after they had met each other abroad at a legal conference. Before the marriage Mrs Diego practiced as an attorney in Brazil. However, since the marriage she has not worked again because her legal qualifications are not recognised in South Africa. Mr Diego has been a state advocate for the past 15 years. He earns a good salary and is also a member of the government's pension fund. Although Mr Diego works full-time, he is just as actively involved in the daily life of their twin sons, who were born of the marriage eight years ago, as Mrs Diego. Mr and Mrs Diego were happily married until a month ago, when Mr Diego acknowledged that he was actually homosexual, and moved in with his friend, Mr Nel. Shortly thereafter Mr Diego sued Mrs Diego for a divorce, as he wished to get married to Mr Nel as soon as possible. In the summons he offers to pay an amount of money to Mrs Diego in settlement of her accrual claim and requests joint physical custody of the twins. Mrs Diego opposes the divorce. She denies that the marriage has broken down irretrievably and feels that

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Mr Diego should get his life in order and return to her and the twins. In the event that Mr Diego is not prepared to do so, she claims that the amount of money that he offers her should be increased, as it is clear that his pension interest was not considered in the calculation of this amount. She also claims that custody of the twins should be awarded to her, since she wishes to return with the boys to Brazil, where she can practice as an attorney again and enjoy the support of her family.

Answer the following questions:

- (a) Which legal concept is used in our law to determine when a marriage relationship is no longer normal? Also give a description of this concept and refer to a case in which the concept was described. (4)
- (b) Does the court have a discretion to refuse a divorce in this case despite the fact that Mr Diego can prove that the marriage has broken down irretrievably? Explain your answer with reference to the relevant legislation and case law. (You need not discuss the provisions of section 5A of the Divorce Act 70 of 1979.) (7)
- (c) Can Mrs Diego claim that Mr Diego's pension interest must be considered in the calculation of her accrual claim? Explain your answer with reference to the relevant legislation and case law. (7)
- (d) What are Mr Diego's chances of obtaining an order for joint physical custody? Explain your answer with reference to the relevant case law and also give a definition of joint physical custody. (7)
- (e) What are Mrs Diego's chances of emigrating with the boys to Brazil? Explain your answer with reference to the relevant legislation and case law. (8)
- (f) Will Mr Diego and Mr Nel be able to marry each other immediately after the granting of the divorce order? Explain your answer with reference to the relevant legislation and case law. (5)

[38]

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QUESTION 6

Rearrange the second column below and rewrite the rearranged second column in your answer script so that the cases listed there match the statements in the first column, for example: (i) *Reid v Reid*. All the statements in the first column deal with the maintenance of spouses after divorce.

<u>Statement</u>	<u>Case</u>
(i) Rehabilitative maintenance may be awarded to a woman if it is likely that she can be trained or retrained and that she will, therefore, be able to provide her own support.	<i>Reid v Reid</i>
(ii) Nominal maintenance can be awarded if there is reason to believe that the plaintiff will probably need maintenance at some future stage and it is fair and just for the defendant to provide such maintenance even though the plaintiff can support himself or herself at the time of divorce.	<i>Swart v Swart</i>
(iii) Only conduct which has a bearing on the breakdown of the marriage is relevant and can be taken into consideration in respect of the issuing of a maintenance order.	<i>Grasso v Grasso</i>
(iv) A maintenance order cannot be varied simply because the applicant agreed to an unjust divorce settlement, as this could easily lead to abuse of the court process.	<i>Kroon v Kroon</i>
(v) If a husband can afford to have his ex-wife not go out to work after divorce and where she did not work prior to the divorce, and particularly where his misconduct has caused the breakdown of the marriage, he should maintain her without it being necessary for her to take up employment.	<i>Nel v Nel</i>

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QUESTION 7

- (a) Which important constitutional value is relevant with regard to both the issue of the recognition of customary marriages and the issue of the recognition of Muslim marriages? (1)
- (b) Which practices regarding customary marriages are said to infringe the constitutional value intended in Question 7(a)? Explain briefly. (6)
- (c) Briefly explain whether the infringement of the constitutional value intended in Question 7(a) can be justified in terms of section 36 of the Constitution of the Republic of South Africa, 1996. (3)
- [10]