

**PVL102-R**

May/June 2006

**FAMILY LAW**

Duration : 2 Hours

100 Marks

**EXAMINERS :****FIRST :****PROF H DE JONG****MRS S JACOBS****PROF J HEATON****SECOND :****PROF JM POTGIETER**

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 examination script and leave a few lines open before starting 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 MAY GET LOST.**

- (a) A misrepresentation concerning a significant personal quality of one of the parties to an engagement does not constitute a ground for cancelling the engagement if the misrepresentation was made innocently. (1)
- (b) When Johan, who is married to Gerda in terms of the Marriage Act 25 of 1961, promises Susan that he will marry her as soon as he obtains a divorce, a valid engagement comes into existence. (1)
- (c) Persons who are blood relations in the direct line may under no circumstances conclude a civil marriage with each other. (1)
- (d) There is no prohibition on a civil marriage between a person and his or her relations by affinity in the collateral line. (1)
- (e) If a voidable marriage is not set aside by a court, it remains a perfectly valid marriage. (1)

**[TURN OVER]**

- (f) In their antenuptial contract, spouses may not agree on the devolution of their assets after their respective deaths. (1)
- (g) The Maintenance of Surviving Spouses Act 27 of 1990 also applies to surviving life partners. (1)
- (h) According to our courts, someone who wants to divorce his or her mentally ill or unconscious spouse is compelled to institute the divorce action in terms of section 5 of the Divorce Act 70 of 1979 and thus cannot base the action on the irretrievable breakdown of the marriage. (1)
- (i) In terms of the Recognition of Customary Marriages Act 120 of 1998, the sole ground for divorce upon which a court may dissolve a customary marriage is the irretrievable breakdown of the marriage. (1)
- (j) A parent's duty to support his or her child is not a component of parental authority. (1)
- [10]

## **QUESTION 2**

Susan and Nevil entered into a civil marriage in 2000 when Susan was only 17 years old and Nevil was only 20 years old. Because both parties' parents objected to the marriage and Susan and Nevil did not have enough money to apply to the high court for consent, they married without the necessary consent. Susan and Nevil agreed to be married out of community of property and community of profit and loss and expressly excluded the accrual system in their antenuptial contract. Susan and Nevil, who are still happily married today, were recently informed that section 24(2) of the Matrimonial Property Act 88 of 1984 (which regulates the patrimonial consequences of a minor's marriage which is not set aside), does not make provision for the matrimonial property system they selected. Susan and Nevil now approach you for advice on the correct position regarding their matrimonial property system. Fully advise them, with reference to the content and implications of section 24(2) of the Matrimonial Property Act as well as the various interpretations of this section. You need not refer to the constitutional aspects regarding this issue. [12]

**QUESTION 3**

Mr and Mrs Nel married in community of property in 1970. In the spouses' antenuptial contract it is clearly stipulated that the house Mrs Nel inherited from her parents in 1969 falls outside her and Mr Nel's joint estate. At present, this house is being let because the spouses bought their own residence last year. Mr Nel owns no separate assets. Both Mr and Mrs Nel are retired and neither spouse practises a profession or trade or owns a business.

Answer the following questions:

- (a) Can spouses who are married in community of property have an antenuptial contract?  
Answer "yes" or "no" only. (1)
- (b) What form of consent must Mrs Nel obtain from Mr Nel for concluding each of the following transactions?
- (i) Mrs Nel wishes to pledge furniture of the common household which form part of the joint estate. (1)
- (ii) Mrs Nel wishes to institute legal proceedings against the plumber who caused severe damage to the house she inherited from her parents. (1)
- (c) Does the rent, which Mrs Nel receives for letting the house she inherited from her parents, form part of her and Mr Nel's joint estate? Explain briefly. (2)
- [5]**

**QUESTION 4**

Mr and Mrs Roux married out of community of property in 2004. The spouses did not expressly exclude the accrual system in their antenuptial contract. Mrs Roux, however, neglected to declare the commencement value of her estate in the antenuptial contract. She also failed to declare the commencement value in a separate statement. In the antenuptial contract Mr Roux declared that he had assets to the value of R3 000 at the time of the conclusion of the marriage. (Mr Roux had no debts at the time of the conclusion of the marriage.) Mrs Roux died last week.

Mr Roux's net estate at the time of Mrs Roux's death is valued at R20 000 and consists of the following:

- R6 000 which he received as satisfaction for pain and suffering after being injured in a motor vehicle accident
- R4 000 which he received as compensation for loss of income when he was unable to work while recovering from his injuries
- R2 000 which he received as a donation from Mrs Roux during the subsistence of their marriage
- R8 000 which he earned on his own

**[TURN OVER]**

Mrs Roux's net estate at the time of her death is valued at R30 000 and includes, inter alia, the following:

- a diamond ring to the value of R4 000 which her mother donated to her
- R6 000 which she inherited intestate from her father

Suppose that during the subsistence of the marriage, money depreciated to such an extent that, in terms of the consumer price index, R2,00 now has the same value as R1,00 had at the beginning of the marriage.

Indicate by doing the necessary calculations, whether Mr Roux has an accrual claim against the executor of Mrs Roux's estate. Discuss your answer by substantiating your calculations. [20]

### QUESTION 5

Rearrange the second column below and rewrite the rearranged second column in your answer script so that the cases listed there match the statements set out in the first column, for example: (i) *Maharaj v Maharaj*. The statements in the first column deal with divorce and the consequences of divorce in general.

| <u>Statement</u>  | <u>Case</u>              |
|---|--------------------------|
| (i) The court does not have a discretion to refuse a divorce if one of the grounds for divorce is proven.   | <i>Maharaj v Maharaj</i> |
| (ii) Section 7(7) of the Divorce Act 70 of 1979 did not change the rule that a pension interest is not an asset in a spouse's estate, but only provides a mechanism for parties to divorce proceedings to have access to each other's pension interests.                  | <i>Amar v Amar</i>       |
| (iii) The court issued a divorce decree in terms of the Divorce Act 70 of 1979, but ordered the husband to pay maintenance to his wife (who was not otherwise entitled to maintenance) until such time as he co-operated in obtaining a Jewish religious divorce as well. | <i>Coetzee v Coetzee</i> |

[TURN OVER]

|  |                                  |
|--|----------------------------------|
| (iv) In order to succeed in a divorce action based on irretrievable breakdown, the plaintiff must prove that there has been a change in the pattern of the marriage from which breakdown can be deduced. | <i>Levy v Levy</i>               |
| (v) Pension interests are part of the assets of the parties to divorce proceedings for purposes of the division of their assets.   | <i>Sempapalele v Sempapalele</i> |

[10]

**QUESTION 6**

Mr and Mrs Botha married out of community of property in 2000. In 2004, after the birth of their son, Martin, Mr Botha bought a car for Mrs Botha as a gift. The spouses' antenuptial contract makes no mention of this donation. Mr Botha sued Mrs Botha for divorce last week when he discovered that she has been having an affair with their neighbour.

- (a) Mr Botha also requested a forfeiture order in terms of section 9 of the Divorce Act 70 of 1979 against Mrs Botha. Fully discuss, with reference to case law and the opinions of legal authors, whether the car (which Mrs Botha received as a gift from Mr Botha during the subsistence of their marriage) will be regarded as a patrimonial benefit of the marriage which Mrs Botha may have to forfeit upon divorce. (9)
- (b) Mr Botha, who wants custody of Martin, heard that the courts prefer mothers as custodians, as it is simply assumed that they make better caretakers. Explain, with reference to case law and Cronjé and Heaton's constitutional arguments, whether this maternal preference is still, or ought to be, applied by our courts. (8)

[17]

[TURN OVER]

**QUESTION 7**

Answer the following questions on redistribution orders in terms of section 7(3)-(6) of the Divorce Act 70 of 1979 and maintenance orders in terms of section 7(1)-(2) of the Divorce Act 70 of 1979:

- (a) *Beaumont v Beaumont* was the first decision by the appellate division (now the supreme court of appeal) on redistribution of assets. Explain what the appellate division held in this case regarding each of the five matters mentioned below. Your answer should include an explanation of the one-third "rule" and the "clean-break" principle.
- (i) the one-third "rule"
  - (ii) the "clean-break" principle
  - (iii) the interrelationship between a redistribution order and a maintenance order
  - (iv) the role fault/misconduct plays in the granting of redistribution orders
  - (v) the nature of the contribution in terms of section 7(4) of the Divorce Act 70 of 1979
- (8)
- (b) What was the reason for the insertion of section 7(3)-(6) in the Divorce Act 70 of 1979? Explain briefly. (2)
- (c) What is understood by the term "rehabilitative maintenance"? Explain briefly. (2)
- (d) May a court grant an order in terms of section 7(2) of the Divorce Act 70 of 1979 that provides for lump-sum maintenance? Briefly explain with reference to authority. (4)
- [16]**

**QUESTION 8**

Answer this question by writing in each case only the number of 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) Which one of the following statements about children's rights is false?
- [1] Internationally, the focus of the private-law rules regarding the parent-child relationship is increasingly shifting from the rights and powers of parents towards the rights and entitlements of children.
  - [2] The most important instrument for the recognition and protection of children's rights in South Africa is the Constitution of the Republic of South Africa, 1996.
  - [3] Section 28 of the Constitution of the Republic of South Africa, 1996 applies to all children below the age of 21 years.
  - [4] The Constitution of the Republic of South Africa, 1996 prescribes that a child's best interests are of paramount importance in every matter concerning the child.
- (2)

**[TURN OVER]**

(b) Which one of the following instances is not a way in which a father acquires parental authority over his child?

- [1] when his child is born of a valid marriage
- [2] when he marries the mother of his extra-marital child
- [3] when he adopts a child
- [4] when he lives with the mother of his extra-marital child in a stable and permanent life partnership

(2)

(c) Which one of the following statements about parental authority is true?

- [1] A parent, like any other guardian, is entitled to compensation for the administration of his or her child's estate.
- [2] Although the custodial parent enjoys a broad discretion in respect of the exercise of the responsibilities and rights encompassed by custody, the court will, according to *Martin v Mason*, easily interfere with the exercise of that discretion.
- [3] The family advocate is the upper guardian of children.
- [4] Parental authority is terminated by, inter alia, the attainment of majority by the child over whom the authority is exercised.

(2)

(d) In which one of the following cases did the court hold that paternal grandparents are indeed liable for maintenance in respect of their son's extra-marital child (if the child's parents are unable to support him/her)?

- [1] *Petersen v Maintenance Officer*
- [2] *Motan v Joosub*
- [3] *Fraser v Children's Court*
- [4] *Heystek v Heystek*

(2)

(e) A donor who donates property to someone who lacks capacity to act, can appoint a curator to administer the property for the duration of the person's incapacity. A curator who is appointed in this manner is called a(n)

- [1] assumed curator
- [2] curator nominate
- [3] curator dative
- [4] *curator/curatrix ad litem*

(2)

[10]

TOTAL: [100]