



RIARA LAW SCHOOL
UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE
AND
PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM
DECEMBER 2019
RLLB 402: FAMILY LAW
INSTRUCTOR: W.A. MUTUBWA FCI Arb

INSTRUCTIONS

1. This is the final examination in Law of Succession. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THE THREE QUESTIONS.**
3. The examination has 4 pages, including this one.
4. Time allocated for this examination is **TWO HRS** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in you answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You re also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

Question One (30 marks)

Ann Mary, a spinster married John Peter, a divorcee in a colourful ceremony celebrated at the Ndakaini PCEA Church on 23rd August 1992. The marriage was concluded under the now repealed African Christian Marriage and Divorce Act Cap 151 of the Laws of Kenya. Ann was at the time 23 years of age while Adam was 42 years old. The couple cohabited in several places including South B Nairobi, between August 1992 and September 2000; Mugoya South C Nairobi between October, 2000 and December, 2005. The couple last resided together in Karen, Marula Lane from January 2006. Ann and Peter were blessed with three children: Kyle born on 14th August 1993; Pratt born on 26th December 1999 and Christopher born on 13th June 2006.

After 3 years of marriage, the couple started drifting apart on account of several factors. Peter, an employee of a commercial bank was promoted to the rank of branch manager in the year 1998 and was transferred to head the Mombasa branch of his employer bank. Between 1998 and 2000, Peter would travel and visit his family once a month but this subsequently reduced to intermittent visits of at most once every 6 months. From the year 2009 he only visited once. Ann has also established that Peter has since purchased a house in Bamburi Mombasa where he is cohabiting with a lady only known to Ann as Rukia and with whom Peter has sired two children. Peter no longer contributes to the upkeep of his three children with Ann and any attempts to get him to pay school fees or contribute financially have been rudely rebuffed. Peter has even now changed his mobile phone number and remains inaccessible. Shortly into the marriage, Peter, who was a strict teetotaler during his courtship with Ann, turned into binge drinking. As a result, Peter would always come home late in the night or in the wee hours of the morning or even disappear for weeks on ends. When asked to account for his whereabouts, Peter would turn violent on Ann. Ann recollects at least three occasions when Peter has physically assaulted her. The first occasion was in early 1989, when he beat her senseless and broke her jaw with a beer bottle. In late November 1992, Peter broke two of her ribs and damaged several household items in a rage of violence. Yet again sometime mid in the year 2004 Peter hit Ann with a metal bar causing her to lose three of her upper teeth. On all these occasions Ann would forgive Peter and return to the matrimonial home after his pleas and promises to quit drinking alcohol.

Many were the occasions when Peter would be moody and deny Ann sexual intercourse. Ann recalls that for a while year between October 2006 and April 2009 Adam was completely disinterested in having sex with her and retreated to a guest room whenever he

visited from Mombasa. The same conduct was also apparent whenever Ann was pregnant. As a result Ann felt unwanted and unappreciated. Ann is currently saddled with the payment of the mortgage for the family home which stands at kshs 200,000 per month, school fees of kshs, 350,000 per term and general maintenance of herself and her children at an estimated cost of kshs. 150,000 per month. Despite efforts by and interventions through relatives and their best couple, the marriage seems to have hit the rocks.

With the foregoing facts, answer the following questions

- (i) **Draw a Petition for Divorce on behalf of Ann** (20 marks)
- (ii) Assume you have been retained by Peter to respond to the Petition filed by Ann. Peter denies having abandoned Ann and the Children and was actually pushed away by the Conduct of Ann. He alleges that Ann is unloving, demanding and belittles him by comparing him with other men. He claims that Ann is insatiable hence her unreasonable sexual demands. This he says stressed him so much leading to his drinking habit which he says is moderate and responsible. He also tells you that the lady called Rukia is a colleague with whom they share an apartment in Mombasa in a bid to cut costs and nothing else. Peter states that he suspects that Christopher, the youngest of his children is not his biological son. He also claims that Ann has a large appetite for money and is only after his wealth and nothing more. He recalls several occasions between the years 2006 and 2009 when Ann had told him to his face that she would teach him a lesson and leave him penniless. He also claims that Ann has turned the children against him. He admits that the marriage has broken down but is categorical that he is not to blame. He squarely blames Ann for the state of affairs. He would also like to Petition for divorce as well.

Draw Peter's response to the Ann' Petition setting out every possible relief available to him (10 marks)

Question Two (20 marks)

- (i) The Marriage Act 2014, has brought parity of status to the institution of marriage regardless of the regime under which the marriage was concluded. As a result various statutory minimums which must be met for there to be a valid marriage have been established; and these cut across all the regimes of law. Briefly discuss these

elements/requirements that must exist in every valid marriage under the Act, noting to cite the relevant provisions of the Act and caselaw in illustration thereof. (10 marks)

- (ii) “Consent to marry” is a fundamental prerequisite for a person to enter into marriage, yet this basic element of matrimony is treated differently under the various regimes of marriage recognised in Kenya. Briefly illuminate how the essential element of ‘consent’ is treated by the various regimes of marriage in Kenya and how the Marriage Act 2014 seeks to address this disparities (10 marks)

Question Three (20 marks)

“The post –*Echaria* era reveals a more deliberate and vigorous approach by the Court in attempting to determine the actual contribution of the parties in order to establish the beneficial interest in matrimonial property. This creates a more realistic picture that recognizes that particular circumstances within which marital relations exist as opposed to the rather artificial fifty-fifty split for all marriages. This is itself not without controversy as *Echaria* has been criticised as rolling back the gains made by women in the matrimonial property settling... It has even been argued that article 45 of the Constitution of Kenya 2010 with its declaration of parties having equal rights before, during and after marriage is an endorsement of the equal split approach...The issue remains live with a high public interest quotient and implicative of the constitution, requiring, short of clear reformist legislation, a final authoritative pronouncement by the Supreme Court.”

Patrick Kiage, 2016 Family Law in Kenya page 276.

Appreciating the evolution of the jurisprudence handed down by Kenyan Courts around matrimonial property rights and distribution of matrimonial property upon irretrievable breakdown of marriage, evaluate the validity or merit of the preposition aforequoted (20 marks)