



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

JANUARY – APRIL 2022

FACULTY OF LAW

REGULAR PROGRAMME

DCLS 069: FAMILY LAW AND SUCCESSION

Date: APRIL 2022

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any TWO Questions

Q1. "I conceive that marriage, as understood in Christendom may ... be defined as the voluntary union for one to one woman to the exclusion of all others." Lord Penzance in *Hyde v Hyde*.

- a) With reference to relevant case law, discuss the essentials of marriage as described above. **(10 marks)**
- b) A marriage is a legal union that creates duties and responsibilities between the parties. With the aid of decided cases, list and explain these duties. **(10 marks)**
- c) Discuss the relevance, if any, of family law to testate and intestate succession. **(10 marks)**

Q2. a) Discuss the grounds upon which a court may grant a divorce **(10 marks)**

b) Distinguish between:

- i) annulment of marriage **(5 marks)**
- ii) divorce **(5 marks)**

Q3. Mzee Dawa suffered from a severe bout of pneumonia in March 2016. During his hospital stay, he called all members of his immediate family to his bedside and apportioned his property amongst them. At the time, Mzee Dawa had three wives, Maria, Hawa and Pamela. Maria had two children, Tom and Davis; Hawa had one daughter, Kanini; whilst Pamela had three children, Karen, Diana and Collin. To his three sons, Mr Dawa gave his four eucalyptus farms worth 100,000,000 Kenya shillings, to be shared equally amongst them; his two rental homes in Kajiado and Kilifi, worth 20,000,000 Kenya shillings each to

his first two wives; his mango farm in Turkana county to his eldest child, Tom and all other property worth 50,000,000 shillings to his third wife, Pamela. In April 2016, Mzee Dawa was cured of pneumonia and returned home. In October 2016, Mzee Dawa died peacefully in his sleep. Discuss how Mzee Dawa's property shall be distributed. **(20 marks)**

Q4. Define and explain the following concepts:

- a) Best interests of the child **(5 marks)**
- b) Contribution **(5 marks)**
- c) Revival of wills **(5 marks)**
- d) Revocation **(5 marks)**

Q5. Mrs Kijabe, a well-known business woman, comes into your offices with her daughter, Mary, and asks you to draft for her a will. Mr Kijabe, her husband, has been living with Teresa, a local trader, for the past ten years, and has two children, Mani and Dida. Mrs Kijabe states that she wants her tea farming business, worth Kshs 200,000,000, to go to her two sons who shall share it equally. She also states that her daughter, Mary, who is married with two children, Tina and Sheila, shall inherit nothing from her as she is already married and thus inheriting her parent's property is against Tula customary law. Her rental property in Kajiado County, shall go to her long-term friend, Kizito, who has seen her through many dark days. To her faithful watchman, Karisa, she leaves her two cars. To her housekeeper, Risper, she leaves a valuable rare first edition novel. In the same way, the proceeds of her current account at Neema Bank shall be used to prepare a lavish burial at her compound, where she shall be buried facing Mount Kenya. The remainder of the proceeds shall be used to take care of her beloved puppies. Lastly, she appoints Mr. Mali, the family accountant who is well versed with her books, as the executor of her estate. She states that she shall come later that day with Karisa and Mr. Mali, who shall act as witnesses to her will. As she drives away from your offices, she is involved in an accident in which her car immediately bursts into flames and everything is charred, including the rare book, which she always carries with her for safe keeping. Both Mrs. Kijabe and Mary succumb to their injuries and die on the way to the hospital. While looking through her belongings, her surviving children pieces of her old will, torn and placed in her safe.

- a) Teresa comes to your office to seek advice regarding her chances of inheritance. Advice. **(5 marks)**
- b) Discuss the manner in which the estate shall be distributed. **(15 marks)**

END