



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

JANUARY – APRIL 2015 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 305: FAMILY LAW

Date: April 2015	Duration: 2 Hours
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INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions
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- Q1. The Marriage Act, 2014, is the culmination of a long journey in Family Law reform and reflects the aspirations of the Kenyan people. In repealing the previously existing statutes on marriage law, how does the Marriage Act, 2014:-
- a) Harmonise marriage law in regard to the various systems of marriage in Kenya? **(5 marks)**
 - b) Minimise the complexity, unpredictability and inefficiency occasioned by the hitherto multiplicity of marriage laws? **(10 marks)**
 - c) Afford parties liberty to contract civil, religious, or customary marriages? **(10 marks)**
 - d) Avail Kenyans a certain level of legislative autonomy in Family Law? **(5 marks)**
- Q2. Under Civil and Common Law, marriage, as encapsulated by **Hyde vs Hyde** is a private agreement between one woman and one man to the exclusion of all others. On the other hand, by and large, African customary marriages are a communal affair that is signified by protracted negotiations, customary rites and marriage consideration. These fundamental differences notwithstanding, there are significant points of convergence between civil and customary law marriages.
- Discuss this assertion in the context of the essentials of a valid marriage, citing relevant constitutional provisions, statutes, case law and customary law practices. **(20 marks)**

Q3. Section 6 of Kenya's Matrimonial Property Act, 2013, provides inter alia, that the parties to an intended marriage may enter into a pre-nuptial agreement to determine their property rights.

- a) What is a pre-nuptial agreement? **(2 marks)**
- b) What are the elements of a valid pre-nuptial agreement? **(10 marks)**
- c) Citing relevant statutes, case law and practice, articulate some of the ills that a pre-nuptial agreement seeks to cure in light of the subsisting law on divorce and subsequent division of property. **(8 marks)**

Q4. In January 2013, your friend Aisha met and fell in love with Jeff an employee of a United Nations agency domiciled in Nairobi, Kenya. In August 2013, Aisha who runs a successful taxi business in Gigiri, Nairobi, Kenya, moved in with Jeff. They began living together in a rental apartment in Closeburn Estate. While at Closeburn, Jeff would pay rent while Aisha took care of utilities and food.

When Jeff and Aisha moved in together, Aisha's parents, who are Shiite Moslem tried to dissuade Aisha from committing such a terrible "haram" with an infidel. They even tried to have Jeff arrested but since he has diplomatic immunity, there is not much they could do.

In November 2013, Jeff took a loan from his employer and bought a town house in Rosslyn Estate, into which they both moved. To help him out, Aisha sold two of her taxi cabs and put the money into the house purchase. The title to the house is in Jeff's name.

Jeff has recently been diagnosed with advanced cancer of the colon and has to be flown back home to the UK for specialized treatment among family and friends. The British High Commission has denied Aisha a visa to enable her accompany Jeff to the UK. Aisha is distraught because she does not know whether or not Jeff will pull through. She is worried about the possibility of a future without Jeff especially as she lost many of her friends when she moved in with him without going through a "proper marriage." To add to this confusion, Aisha is two months pregnant with Jeff's child but has not told him yet. She comes to you for help.

What would you advise Aisha to do in order to secure her Rosslyn home and the future of her unborn child? **(20 marks)**

Q5. In most African cultures, children are born and nurtured within a conventional family that comprises of a father and mother(s), siblings and close members of the family. However, although the recently enacted Marriage Act, 2014, makes no mention of these marriages, there are circumstances under which parties enter into special types of marriages that do not fall under the banner of “conventional marriages,” but are, nonetheless, allowed under African Customary Law.

- i) Discuss three of these special types of marriage and how they impact the rights of children born in these unions. **(15 marks)**
- ii) Do these marriages have a future? Explain your answer. **(5 marks)**

END