



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

## A. M. E. C. E. A MAIN EXAMINATION

MAY – JULY 2019 TRIMESTER

FACULTY OF LAW

SPECIAL / SUPPLEMENTARY EXAMINATION

CLS 201: FAMILY LAW

P.O. Box 62157

00200 Nairobi - KENYA

Telephone: 891601-6

**Date: JULY 2019**

**Duration: 2 Hours**

**INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions**

1. In January 2016, your friend Aisha met and fell in love with Jeff an employee of a United Nations agency domiciled in Nairobi, Kenya. In August 2016, Aisha, who runs a successful taxi business in Gigiri, Nairobi, Kenya, moved in with Jeff. They began living together in a rented 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 Moslems tried to dissuade Aisha from committing such a terrible act, "*haram*" with an infidel. They even tried to have Jeff arrested, but since he had diplomatic immunity, there was not much they could do.

In November 2016, Jeff took a loan from his employer and bought a town house in Rosslyn Estate, into which he and Aisha 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 specialised treatment. 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? **[30 MARKS]**

2. When solemnizing marriage between two of your classmates, Atieno and Kamau on Valentine’s Day in the Holy Trinity Chapel, Rev Fr Dr Boniface Mungai the University Chaplain made the following remarks: “.....*Marriage is not like buying a cow to ensure a constant supply of milk. It is a sacred union between a man and a woman in the bond of holy matrimony as was sanctioned by God himself in the Garden of Eden. Marriage is regulated by the law of the land. It has legal, moral, ethical, religious and social implications and cannot therefore be entered into carelessly, casually, or without much thought. It is what you lawyers call a **suis generis** contract.....*”

Discuss the **suis generis** nature of a marriage contract in the context of essentials of a valid marriage, citing relevant constitutional provisions, statutes, case law, and customary law practices. **[20 MARKS]**

3. On 12<sup>th</sup> December 2018, your childhood friend Taabu married her high school sweetheart Mateso at a colourful wedding at the Kunguru Village Nature Resort, in the Karen suburb of the City of Nairobi. The wedding ceremony was officiated by Prophet Panda Mbegu of the WateuleWapotovu Church of East Africa. After the wedding, Taabu and Mateso proceeded to Mauritius for a two week honeymoon.

On the wedding night, Mateso failed to “rise to the occasion.” Although she was greatly disappointed, Taabu blamed her newly wedded husband’s inability to consummate their marriage on fatigue. They both had had a hectic time planning and organising their wedding and subsequent honeymoon. Unfortunately, when subsequent attempts to consummate their marriage met with failure every night of the honeymoon, invariably due to Mateso’s “embarrassing problem,” Taabu’s annoyance turned to alarm and immediately upon the couple’s return to Nairobi from Mauritius, Taabu booked an appointment for them to see a doctor. Mateso refused to see the doctor outright. He has since become withdrawn, hostile and abusive to Taabu. To complicate matters, Taabu read in the dailies recently that Prophet Panda Mbegu has been charged and convicted of having knowingly and intentionally on diverse dates between January 2017 and

February 2019, celebrated several unions purporting to be marriages without being authorised by the law so to do.

Taabu has retained you to deliver her from what she calls 'a living hell.' What is your advice to her? **[20 MARKS]**

4. Section 6 (3) of Kenya's Matrimonial Property Act, 2013, provides that 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 constitutional and statutory provisions, case law and practice, articulate some of the ills that a pre-nuptial agreement seeks to cure in a subsisting marriage; divorce; and subsequent division of property. **[8 MARKS]**

5. 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. In your opinion, do these marriages have a future? Explain your answer **[5 MARKS]**

**\*END\***