



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

**A. M. E. C. E. A**

P.O. Box 62157

00200 Nairobi - KENYA

Telephone: 891601-6

Ext 1022/23/25

**MAIN EXAMINATION**

**SEPTEMBER –DECEMBER 2021**

**FACULTY OF LAW**

**REGULAR PROGRAMME**

**CLS201: FAMILY LAW**

**Date: DECEMBER 2021**

**Duration: 2 Hours**

**INSTRUCTIONS: Answer Question ONE and any other TWO Questions**

**(NB QUESTION 1 IS COMPULSORY AND CARRIES 30 MARKS. THE REST OF THE QUESTIONS CARRY 20 MARKS EACH)**

Q1. In January 2001, Captain Rubani your big brother Ken's best friend, married Mrembo his high school sweetheart at a colourful wedding, at the St Joseph the Worker Roman Catholic Church, Dudley Hill, Nairobi. The wedding was celebrated by the Archbishop of the Archdiocese of Nairobi. Your brother Ken was the couple's best man.

The Rubanis' marriage was blessed with two issues, a boy, Rubi born in December 2011, and a girl, Rubina born in April 2014.

The Rubanis led a life of married bliss until 2017 when Captain Rubani, an employee of Jamhuri Airways (JA) was promoted to Chief Operations Officer. His new position meant that Captain Rubani would be airborne and away from home for the greater part of the week, as he was in charge of JA's transatlantic route. He would leave his Nairobi home for New York City every Monday evening and return on Friday morning.

Thus immersed in his work, Captain Rubani does not quite remember exactly when things went awry at home. What he remembers is that, a year into his new position, he noticed that his wife had started treating him with contempt and indifference. She no longer took any notice of what he ate, drank, or wore, and they hardly spoke to each other, unless if it was something to do with the children. Any attempt to start a conversation on the part of Captain Rubani would be met with resistance, sarcastic remarks, or outright insults by his wife Mrembo. She even stopped accompanying him to Mass on Sundays, a thing that worried Captain Rubani no end, considering that theirs was a devout Roman Catholic family.

Although he was frustrated with the way things were going at home, Captain Rubani who loved his wife dearly, was not overly anxious and blamed his wife's hostility and cruelty to him on boredom and pre-menopausal mood swings. However, things came to a head when on cancellation of his flight on the night of Monday 29<sup>th</sup> November, 2021, Captain Rubani decided to drive back home, rather than spend the night at the airport hotel as he would often do when his flights were cancelled without notice. It was providential, or so he thought, to have his flight cancelled on 29<sup>th</sup> November, which was his wife's birthday. On the way home he bought her a bouquet of red roses and a bottle of expensive champagne.

On arrival at home at 2.00am in the morning, Captain Rubani found his colleague Captain Fisi's car parked outside the house. Thinking that something had happened to his family, Captain Rubani used his spare keys and rushed into their bedroom. He found his wife in bed, dead asleep, but heard the bath running next door. Thinking that his wife had forgotten to turn off the taps, Captain Rubani yanked the bathroom door open and to his shock and horror, found Captain Fisi soaked in a bubble bath, stark naked, and oblivious to the world around him. Strewn on the bathroom floor were used condoms.

In a murderous rage, Captain Rubani took photos of the spectacle in front of him, collected the used condoms, secured the condoms in a paper bag, and ran out of the house. In a daze, he drove straight to Ken's house where you were called and retained on the spot. Captain Rubani's instructions are brief and to the point. "Please help me end this nightmare of a marriage, but don't let her take my children or my home." What is your advice to Captain Rubani? **[30 MARKS]**

Q2. In respect to Civil, Christian and Hindu marriages, the Kenyan Marriage Act, 2014 borrows heavily from English Common Law where marriage, as encapsulated by **Hyde v Hyde**, is a private agreement between **one** woman and **one** man to the exclusion of all others. The Act also makes provisions for African Customary Marriages which are, by and large, a communal affair that is signified by protracted negotiations, customary rites, and marriage consideration.

The aforementioned fundamental differences notwithstanding, there are **significant points of convergence** between Christian and African Customary Law marriages in Kenya. 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. On 20<sup>th</sup> December 2020, 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 Wateule Wapotovu Church of East Africa (WWCEA).

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 2020 and February 2021, 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]**

Q4. 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]**

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 Marriage Act, 2014, makes no mention of these marriages, there are circumstances under which parties enter into "special" marriages which 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\***