

GREAT ZIMBABWE UNIVERSITY  
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# HEBERT CHITEPO LAW SCHOOL

## BARCHELOR OF LAWS HONOURS DEGREE EXAMINATION QUESTION PAPER

<b>MODULE CODE</b>	<b>LLB 211</b>
<b>MODULE NARRATION</b>	<b>FAMILY LAW</b>
<b>DURATION</b>	<b>3 HOURS</b>
<b>TOTAL MARKS</b>	<b>70</b>
<b>YEAR</b>	<b>2024</b>

### INSTRUCTIONS TO CANDIDATES

- 1. You are advised to read all questions carefully before attempting to answer any.*
- 2. Section A is COMPULSORY.*
- 3. Answer any TWO Questions from Section B.*
- 4. Students are allowed to bring the Constitution of Zimbabwe Amendment (No. 20) Act 2013 into the examination room and the Maintenance Act (Chapter 5:09) into the examination room.*
- 5. This examination is 5 pages including the cover page.*

## SECTION A

Answer **all** questions in this section.

### QUESTION 1

Martha and Ben married customarily in 2014. In 2020, Martha left for the United Kingdom and she left the child in the care of her parents. Sometime in 2021, Ben took his child for the Christmas holiday and did not return her. In 2022, Martha visited home and sought an access order which was granted in the Magistrates Court. She avers that Ben makes access unreasonably difficult and it is against this background that she wants an order compelling the return of the child into her custody as per the position when she left in 2020. She wants custody on the alleged ground that custody remains with the mother and guardianship is exercised by the father in consultation with the mother. Martha strongly believes that she should be granted custody of the child because first, of the child's pending adolescence (being a female child, the child will soon be approaching puberty making her better placed to address these challenges), secondly, the need for strong maternal ties (the child is her only child and she should not suffer the effects of separation) and lastly, her financial capacity in the United Kingdom to look after the child and provide better opportunities is better than that of Ben in Zimbabwe. When the child was called and asked about her wishes, she said she wished to remain with her father and in the environment of a wider family setting as her father lives with his mother and siblings. She further said that since she has well-adjusted in her home and school and enjoys a close relationship with her father, she wishes to continue in her father's custody and she will be engaged in video calls with her mother frequently. Martha conflicts with this arrangement and believes her child's future will be well taken care of if she is granted custody considering the economic stability within a western setting.

1.1 In all matters concerning a child, including the issues of custody, guardianship and access, what is the constitutional yardstick that the courts are mandated to apply and what does the yardstick thereof entail? **[4 marks]**

1.2 Martha averred that she is deserving of the child's custody on the ground that custody remains with the mother and guardianship is exercised by the father in consultation with the mother. Advise Martha on the legal validity of this argument. **[6 marks]**

1.3 With the definition of the terms guardianship, custody and access, advise Martha on what is considered by the courts in granting guardianship, custody and access of a child and whether in this particular case, she has any prospects of success in her claim of custody of her minor child. **[15 marks]**

1.4 If Ben was to be granted custody by a court of law and Martha forcibly takes the child to UK against the court order. What remedy will be available to Ben in terms of the Child Abduction Act (Chapter 5:05) to restore the custody of the child. **[5 marks]**

**[Sub-Total: 30 marks]**

### **SECTION B**

Answer any 2 questions from this section.

#### **QUESTION 2**

2.1 Write brief notes on the following: -

- a. A civil marriage **[4 marks]**
- b. A qualified civil marriage **[4 marks]**
- c. A customary marriage **[4 marks]**
- d. An unregistered customary law union **[4 marks]**

2.2 Briefly outline the key rights and obligations of spouses during marriage and at its dissolution. **[4 marks]**

**[Sub-Total: 20 marks]**

### **QUESTION 3**

Mr and Mrs Bhila were customarily married and the marriage was blessed with four children. In 2020, Mr Bhila passed on without a will prompting the registration of the deceased estate. Upon having advertised the estate, Mrs Bhila got to know that her late husband had 3 children born out of wedlock. The guardians of those 3 children sought to inherit the children from their late father's estate. Mr Bhila left two houses, one in Masvingo where he was leaving in with his wife Mrs Bhila and the other one in Harare. Mrs Bhila is unhappy to hear about the deceased's children that are unbeknown to her as her husband did not inform her about them. She has informed the guardians of the said children that they are precluded from inheriting the free residue of the deceased estate because they are children born out of wedlock.

3.1 What is meant by the term "free residue" of the deceased estate? **[2 marks]**

3.2 What property if any is Mrs Bhila entitled to inherit as the surviving spouse? **[4 marks]**

3.3 With reference to case law and legislation, advise Mrs Bhila if her argument that children born out of wedlock are precluded from inheriting the free residue of their father's deceased estate is justified. **[10 marks]**

3.4 If Mr Bhila was in a polygamous customary marriage and had left 2 other wives apart from Mrs Bhila. What would be inherited by all wives considering that Mrs Bhila was the first wife?

**[4 marks]**

**[Sub-Total: 20 marks]**

### **QUESTION 4**

Monica Kakono is married to Oliver Kakono. They were blessed with two children namely Tafara aged 10 and Jasper aged 12. Oliver is a managing Director with an accounting firm.

Monica is a nurse at Mpilo hospital. Oliver had been behaving violently towards Monica, drinking heavily and coming home in the early hours of the morning. Unable to take his behaviour any further, Monica asked Oliver to move out of the matrimonial home. Monica discovered that one of the reasons why Oliver was violent towards her is that he was having an affair with his secretary Joyce Mutema. The latter attended Monica and Oliver's white wedding. She is a single mother of two. Monica is particularly hurt because Joyce often visits her and they attend the same church. Oliver has been consistently paying monthly maintenance for his children as per the court order.

4.1 Monica is very angry with Joyce. Advise Monica of her rights and claims if any against Joyce. **[10 marks]**

4.2 Oliver's company has not been doing well recently and he is afraid he would default the payment of the exact amount ordered by the court. In light of these changed circumstances, advise him if he has any alternate route to follow, and if so, what procedure will you advise him to take. **[10 marks]**

**[Sub-Total: 20 marks]**

**TOTAL MARKS: 70**

**END OF QUESTION PAPER.**