

CHUKA UNIVERSITY

FACULTY OF LAW

UNIVERSITY EXAMINATION 2022/2023

THIRD YEAR EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

FAMILY LAW

DATE: MAY

INSTRUCTIONS:

ANSWER THREE QUESTIONS

QUESTION 1 IS MANDATORY

Question One

- a. Modern family law around the world focus on nuclear family as and the legality of marriage as its fundamental unit. However, the focus on nuclear family has been myopic, in that familial groups have been excluded from being considered family under the law. Critically analyze the above statement in relation to the family diversity in Kenya. **(10 Marks)**

- b. What are the potential problems of 'non legal' families that have eluded to gain legal recognition in Kenya? **(5 Marks)**

- c. Section 3(5) of the Law of Succession Act Chapter 160 of the Laws of Kenya has now been rendered redundant by the Marriage Act 2014. Anonymous

**Discuss
(15 Marks)**

Question Two

- a. “The post -Echaria era reveals a more deliberate and vigorous approach by the Court in
- b. attempting to determine the actual contribution of the parties in order to establish the
- c. beneficial interest in matrimonial property. This creates a more realistic picture that

- d. recognizes that particular circumstances within which marital relations exist as opposed to the
- e. rather artificial fifty-fifty split for all marriages. This is itself not without controversy as
- f. Echaria has been criticised as rolling back the gains made by women in the matrimonial

g. property settling... It has even been argued that article 45 of the Constitution of Kenya 2010

h. with its declaration of parties having equal rights before, during and after marriage is an

i. endorsement of the equal split approach... The issue remains live with a high public interest

j. quotient and
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k. final authoritative
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Supreme Court.”

l.

m. Patrick Kiage, 2016
Family Law in Kenya
page 276.

n.

o. Appreciating the
evolution of the

jurisprudence handed
down by Kenyan
Courts

p. around matrimonial
property rights and
distribution of
matrimonial property
upon

q. irretrievable
breakdown of marriage,
evaluate the validity or
merit of the
preposition

r. aforequoted

“The post -Echaria era reveals a more deliberate and vigorous approach by the Court in attempting to determine the actual contribution of the parties in order to establish the beneficial interest in matrimonial property. This creates a more realistic picture that recognizes that

particular circumstances within which marital relations exist as opposed to the rather artificial fifty-fifty split for all marriages. This is itself not without controversy as Echaria has been criticized as rolling back the gains made by women in the matrimonial property settling... It has even been argued that article 45 of the Constitution of Kenya 2010 with its declaration of parties having equal rights before, during and after marriage is an endorsement of the equal split approach...The issue remains live with a high public interest quotient and implicative of the constitution, requiring, short of clear reformist legislation, a final authoritative pronouncement by the Supreme Court."

Patrick Kiage, 2016 Family Law in Kenya page 276.

**Appreciating the evolution of the jurisprudence handed down by Kenyan Courts around matrimonial property rights and distribution of matrimonial property upon irretrievable breakdown of marriage, evaluate the validity or merit of the preposition
aforequoted.
(20 Marks)**

Question Three

- a) "In this Act, "parental responsibility" means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child." Section 23(1) Children Act (No.8 of 2001).
- b) a) What are the 'parental responsibilities' envisaged under the Act? [**10 marks**]
- c) b) Who can have a parental responsibility [**10 marks**]

Question Four

- a. Angel and Bokayo, Ethiopian Nationals, are desirous of adopting a three old toddler by the name Saka, the daughter of Karanja and Wangui. They have now approached in your chambers seeking your advice on the procedure to be followed to actualize their plan of adopting Saka.
(20 Marks)

Question Five

Mr. Lule was an infantry soldier attached to Kahawa Army Barracks. Five months ago he was sent to Somalia on a peace keeping mission. On arrival they were shot and Mr. Lule was injured seriously. His colleagues rushed him to a clinic nearby but he succumbed while receiving treatment. Before he died, he told his nurse that should he die, Jane, his fiancée, should get all his property.

After Lule's demise and burial, his father went to Court to apply for a grant of letter of administration. In the meantime, Lule's fiancée has applied for a grant of probate claiming the spoken words by Lule constituted a valid will.

Advise the parties accordingly.

(20 Marks)