



FACULTY : Law

DEPARTMENT : Private Law

CAMPUS : APK

MODULE : LPF41Y0
Law of Persons and the Family

SEMESTER : Second semester

EXAM : November examination 2019

DATE : 20 November 2019 **SESSION** :

ASSESSOR(S) : Dr A Boniface

MODERATOR : Prof MM Watney

DURATION : 3 hours **MARKS** : 100

NUMBER OF PAGES: 5 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. Please hand in the question paper after the exam.
2. Answer both section a and section b.
3. Read the questions carefully.
4. Only answer what is asked.
5. Provide relevant authority (case law and/or legislation) where applicable.

SECTION A: MULTIPLE CHOICE QUESTIONS

1. The court held that it does not have the power to treat marriages out of community of property as if they are marriages in community of property, in the following reported judgment:
 - a. Bezuidenhout v Bezuidenhout 2005 2 SA 187 (SCA).
 - b. Badenhorst v Badenhorst 2006 2 SA 255 (SCA).
 - c. Beaumont v Beaumont 1987 1 SA 967 (A).
 - d. Wijker v Wijker 1993 4 SA 720 (A).
 - e. None of the above.
2. The following statement/s regarding a legal object are correct:
 - a. A legal object is not a legal subject;
 - b. A legal subject can hold a right over a legal object;
 - c. A dog is a legal object;
 - d. a. and b.
 - e. a, b. and c.
3. In AB v Minister of Social Development (CCT155/15) [2016] ZACC 43 it was held that:
 - a. There does not have to be a genetic link between the commissioning parents and the child.
 - b. The “reasonable person” test is important when determining mental illness.
 - c. *Consortium omnis vitae* no longer existed between the parties.
 - d. In the case of surrogacy there must be a genetic link between the commissioning parents and the child.
 - e. None of the above.
4. The trust was seen as part of the husband’s estate as the trust was the husband’s “alter ego” in this case:
 - a. Bezuidenhout v Bezuidenhout 2005 2 SA 187 (SCA).
 - b. Badenhorst v Badenhorst 2006 2 SA 255 (SCA).
 - c. Beaumont v Beaumont 1987 1 SA 967 (A).
 - d. Wijker v Wijker 1993 4 SA 720 (A).
 - e. None of the above.
5. The South African Law of Persons forms part of:
 - a. The Private Law;
 - b. The Public Law;
 - c. The Objective Law;
 - d. a. and c.
 - e. b. and c.

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6. The extent to which a legal subject can participate in legal intercourse is determined by his or her:
- a. Age;
 - b. Status;
 - c. Mental illness;
 - d. a, b and c.
 - e. a. and c.
7. Legal subjectivity comes into existence for natural persons at birth. The common law requirements for when legal subjectivity comes into existence are:
- a. The foetus must be separate from the mother's body;
 - b. Completion of the birth is not influenced by the use of scientific aids;
 - c. The foetus must live independently, even if only for a moment;
 - d. a. and c.
 - e. a, b and c.
8. It was held that a contribution, that can be considered where a redistribution order is made at divorce, can include caring for the home and the family in the following judgment:
- a. Bezuidenhout v Bezuidenhout 2005 2 SA 187 (SCA).
 - b. Badenhorst v Badenhorst 2006 2 SA 255 (SCA).
 - c. Beaumont v Beaumont 1987 1 SA 967 (A).
 - d. Wijker v Wijker 1993 4 SA 720 (A).
 - e. None of the above.
9. Section 5A of the Divorce Act 70 of 1979 stipulates that:
- a. The court may appoint a legal practitioner where one of the spouses is mentally ill.
 - b. Continuous unconsciousness must have lasted for at least 6 months.
 - c. The court has a discretion to refuse to grant a divorce order where the marriage is regulated by religious law, until the requirements of the religious law are met.
 - d. The spouse must be a patient in terms of a reception order.
 - e. a. and d.
10. The immutability principle in South African Family Law means that:
- a. The wife has the same powers as the husband to dispose of assets in the marriage.
 - b. In principle the spouses choice of matrimonial property system cannot be altered after conclusion of the marriage.
 - c. In principle, spouse cannot claim non-patrimonial damages for a delict, against the other spouse.
 - d. Transactions of a spouse on the stock exchange require independent management.
 - e. None of the above.

11. The Civil Union Act 17 of 2006 stipulates that:

- a. Two parties, regardless of their gender, may enter into a civil union;
- b. Parties who enter into a civil union must be 18 years of age or older;
- c. Civil unions are monogamous;
- d. a. and b.
- e. a, b and c.

12. In the case of forfeiture of benefits, there are three factors that must be considered. These factors are not cumulative in nature and all three of these factors do not have to be present. This was stipulated in the case of:

- a. Bezuidenhout v Bezuidenhout 2005 2 SA 187 (SCA).
- b. Badenhorst v Badenhorst 2006 2 SA 255 (SCA).
- c. Beaumont v Beaumont 1987 1 SA 967 (A).
- d. Wijker v Wijker 1993 4 SA 720 (A).
- e. None of the above.

13. Section 28(2) of the Constitution states:

- a. The Bill of Rights is a cornerstone of democracy in South Africa.
- b. Children born of a putative marriage are protected.
- c. The best interests of the child are of paramount importance in every matter affecting the child.
- d. Everyone has the right to security of the person.
- e. None of the above.

14. The following rights, found in the Constituion, are important for the South African Law of Persons and Family Law:

- a. The right to equality;
- b. The right to human dignity;
- c. The right to life;
- d. a. and c.
- e. a, b and c.

15. The *pater est quem nuptiae demonstrant* rule means that:

- a. Adopted children are regarded as children of their adoptive parents.
- b. The husband of the pregnant woman is assumed to be the father of the unborn child.
- c. *Bona fides*.
- d. The *consortium omnis vitae* no longer exists.
- e. c. and d.

Subtotal: [15]

SECTION B:**QUESTION 1**

Discuss the different types of marriages found in South Africa. Explain the differences between them as well as what legislation (if any) regulates them and the most recent developments in South African law regarding the different types of marriages. [20]

QUESTION 2

Compare the legal status of a legal object; an *infans*; minor; mentally ill person; a prodigal; a major and an insolvent. Answer in a table format. [20]

QUESTION 3

Kagiso and Phaladi are not married but have been living together for three years. Kagiso hits Phaladi and swears at her, even in front of their children. Kagiso has also refused to give Phaladi money for her and their children for food and instead uses the money to buy alcohol and gamble. Phaladi has been to the police but they did not open a case of assault against Kagiso. Phaladi has moved out but Kagiso continues to harass her over the phone and to stalk her. Referring to relevant legislation in your answer, explain to Phaladi what other legal remedies she has here. In your answer, also explain what steps she must take; what court she must approach and why the legislation you refer to is applicable. Also explain whether mediation can be used in such an instance. Also explain what Family Mediation is and the advantages and disadvantages of Family Mediation in general. [20]

QUESTION 4

State the differences between an application for presumption of death in terms of the Inquests Act and an application for presumption of death in terms of the common law. Answer this question in a table format. [10]

QUESTION 5

Ayakha and Betsie were married on the 20th of April 2015. They were married out of community of property with inclusion of the accrual system. Before their marriage Ayakha owned a motorcycle worth R10 000 but he owed his friend R10 000 that he had loaned and he owed the bank R10 000 for a short-term loan. Betsie owned jewellery worth R20 000 and furniture worth R50 000. During the marriage Betsie's grandmother died and Betsie inherited R500 000 and Betsie in turn donated R200 000 to Ayakha as a gift. Ayakha was in a motorcycle accident during the marriage and the court awarded him R100 000 for damages to his motor cycle and R50 000 for pain and suffering. Betsie jumps into the sea while she and Ayakha are on a cruise, and her body washes up to shore. At the end of their marriage Betsie's estate is worth R700 000 and Ayakha's estate is worth R1 000 000. The Consumer Price Index (CPI) is 1:2 at the time of Betsie's death. Calculate the accrual claim and also briefly explain each step of the calculation and also indicate in brackets what the amounts are for. [15]

TOTAL: 100 MARKS
