



**UNIVERSITY
OF
LUSAKA**

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SCHOOL OF LAW

203 – FAMILY LAW & SUCCESSION

Pre-requisite: None

COURSE AIMS

This course aims to provide an integrated study of the legal problems of the family.

COURSE OBJECTIVES

At the end of the course students should be able to appreciate and explain:

- the creation and dissolution of the marriage;
- the different kinds of marriages;
- relations of husband and wife;
- relations of parent and child;
- the law relating to legitimacy, custody, adoption and affiliation; and
- Problems relating to testate and intestate succession and inheritance.

COURSE CONTENT

The topics to be covered in the course include the following:

PART 1: HUSBAND AND WIFE

UNIT 1: INTRODUCTION TO FAMILY LAW

- 1.1 Nature and Scope of Family Law
- 1.2 Engagement & Cohabitation
- 1.3 Courts Administering Family Law

UNIT 2: MARRIAGE

- 2.1 Types of Marriages: Customary Marriage; Statutory Marriage; Common Law

- Marriage
- 2.2 Contract of Marriage
- 2.3 Capacity to Marry
- 2.4 Formalities of Marriages: Parental Consent where necessary; Publicising the intention to marry; Requirements for Banns, Licence or Certificate; Marriage Ceremony; Registration of Marriages
- 2.5 Recognition of Foreign Marriages
- 2.6 Presumptive of Marriage

UNIT 3: NULLITY OF MARRIAGES

- 3.1 Distinction between Void and Voidable Marriages
- 3.2 Grounds for Decree of Nullity of Marriage or Void Marriage: Prohibited degree of consanguinity & affinity; Minimum Age; Bigamy; Defective Formalities; Parties are of the same sex; Polygamous Marriage
- 3.3 Grounds on which a Marriage is Voidable: Incapacity to Consummate Marriage; Wilful Refusal to Consummate; Lack of Consent (duress, mistake, insanity or unsoundness of mind); Mental Illness; Suffering from Sexually Transmitted Disease; Pregnancy by another
- 3.4 Bars to Relief of a Nullity Decree: Time; Knowledge of Defect; Decree unjust for Respondent; Approbation
- 3.5 Effects of Decree of Nullity

UNIT 4: EFFECTS OF MARRIAGE

- 4.1 Right to Consortium: Nature of Consortium; Loss of Right to Consortium; Breach of the Duty to Cohabit
- 4.2 Remedies for Interference with the Right to Consortium

UNIT 5: BREAKDOWN / TERMINATION OF MARRIAGE

- 5.1 Death and Presumption of Death
- 5.2 Divorce: History of Divorce Law; Restrictions on Petitions for Divorce within one year of Marriage; Divorce after Previous Proceedings
- 5.3 Ground for Divorce
- 5.4 Proof of Breakdown of Marriage: Adultery; Unreasonable Behaviour; Desertion; Living Apart or Separation
- 5.5 Circumstances under which a Decree may be Refused by Court: Grave Hardship in case of five year separation; Collusion; Discretionary Bars
- 5.6 Reconciliation and Conciliation
- 5.7 Divorce Procedure or Process: Jurisdiction of Courts; Petitions; Trial of Causes; Reconciliation; Decrees (Decree Nisi, and Decree Absolute)

UNIT 6: JUDICIAL SEPARATION

- 6.1 Grounds for Judicial Separation: Adultery; Unreasonable Behaviour;

- Desertion; Living Apart; Assaults and Sexual Offences; Habitual Drunkenness
or Addiction to Drugs; Wilful Neglect to Provide Reasonable Maintenance
- 6.2 Effects of Judicial Separation

PART II: CHILDREN AND FAMILY LAW

UNIT 8: PARENTS AND CHILDREN

- 8.1 Who are Parents of the Child? – Proof of Parentage; Legal Significance of Parentage; Meaning of ‘child’
- 8.2 What is Parental Responsibility? -
- 8.3 Surrogate Parenting

UNIT 9: LEGITIMACY

- 9.1 Introduction
- 9.2 Legitimacy of Children of Void Marriages
- 9.3 Legitimacy of Children of Voidable Marriages
- 9.4 Legitimation and Declaration of Legitimacy
- 9.5 Rights of Legitimate and Illegitimate Children in Intestacy Succession

UNIT 10: ADOPTION

- 10.1 Introduction
- 10.2 Making of Adoption Orders
- 10.3 Procedure for the making of Adoption Orders
- 10.4 Jurisdiction, Functions and Powers of the Court in Adoption

UNIT 11: CUSTODY / GUARDIANSHIP

- 11.1 Custody and Access
- 11.2 Declaration of Unfitness for Custody
- 11.3 Guardianship distinguished from Parents
- 11.4 Appointment and Termination of Guardianship

PART III: PROPERTY AND FINANCIAL PROVISION

UNIT 12: RIGHTS IN PROPERTY CREATED AND AFFECTED BY THE RELATIONSHIP OF SPOUSES

- 12.1 Property acquired by Spouses before and during the Marriage
- 12.2 Matrimonial Home: - Ownership; Occupation

UNIT 13: FINANCIAL SUPPORT FOR MEMBERS OF THE FAMILY

- 13.1 Maintenance of Party to the Marriage

- 13.2 Affiliation and Maintenance Orders
- 13.3 Types of Maintenance Orders and their Duration
- 13.4 Enforcement of Affiliation and Maintenance Orders

UNIT 14: FINANCIAL RELIEF FOR MEMBERS OF THE FAMILY ON DIVORCE, NULLITY AND JUDICIAL SEPARATION

- 14.1 Court Orders in Divorce, Nullity and Judicial Separation
- 14.2 Maintenance Agreements by Spouse
- 14.3 Financial Support and maintenance for Children
- 14.4 Assessment of Financial Provision
- 14.5 Enforcement of Court Orders

UNIT 15: PROPERTY AND FINANCIAL PROVISION ON DEATH OF A MEMBER OF MEMBER OF FAMILY

- 15.1 Testate Succession
- 15.2 Family Provision in a Will: Powers exercisable by Will; Beneficiaries of Will; Unreasonable Provision in Will; Variation of Will by Court; Executors
- 15.3 Intestate Succession
- 15.4 Succession: Distribution of Estate and Persons entitled to the Estate; Administrator of Estate, Appointment, Removal and Duties
- 15.5 Guardian and his Appointment
- 15.6 Jurisdiction of the Court

METHOD OF TEACHING

Four hours of lectures per week.

COURSE ASSESSMENT

Assignment : 10%

Mid-semester Examinations/ Test: 20%

Final Examinations : 70%

Total Marks : 100%

Grading Scheme:

Marks	Grades	Points	Classification
86% - 100%	A+	5	Distinction
76% - 85%	A	4	Distinction
66% - 75%	B+	3	Meritorious
61% - 65%	B	2	Satisfactory
56% - 60%	C+	1	Clear Pass

50% - 55%	C	0	Pass
0% - 49%	D	0	Fail

PRESCRIBED READING / RECOMMENDED TEXT BOOK

P.M. Bromley (1987), Family Law, 7th edition. London: Butterworths.

RECOMMENDED READING

- Hall, Source Book of Family Law
- B. Passingham (1985), Law and Practice in Matrimonial Causes, 4th ed. London: Butterworths.
- Matrimonial Cause Act, Act No. 20 of 2007
- Marriage Act, Cap 211
- Legitimacy Act, Cap 218
- Adoption Act, Cap 214
- Intestate Succession Act, Cap 59
- Wills and Administration of Testate Estate Act, Cap 60
- Affiliation and Maintenance of Children Act, Cap 64
- Administrator's – General's Act, Cap 58