

COUNCIL FOR VOCATIONAL LEGAL EDUCATION

ATTORNEYS' EXAMINATION - SEPTEMBER 2018

PAPER VI- FAMILY LAW AND ARBITRATION

(THREE HOURS)

Candidates have ten minutes to study the Examination Paper which consists of 7 pages before they start writing.

This PAPER is in TWO PARTS.

PART I on FAMILY LAW. There are FIVE QUESTIONS out of which THREE must be answered.

PART II on ARBITRATION There are TWO QUESTIONS out of which ONE must be answered.

All questions carry equal marks. Marks will be granted, where appropriate, for correct reference to enactments and case law.

EACH QUESTION MUST BE ANSWERED ON SEPARATE SHEETS WITH CLEAR MARKING AS TO THE QUESTION ANSWERED AND THE NUMBER OF PAGES.

MAKE SURE THAT YOU PUT ALL YOUR ANSWERS TO THE DIFFERENT PARTS IN THE APPROPRIATE ENVELOPES PROVIDED.

Questions may be answered either in English or French.

PART I FAMILY LAW

Question 1

A. Aisha et Salim se sont mariés religieusement en 1979 et ils ont eu trois enfants ensemble. Malheureusement Salim est décédé à la suite d'un accident. Aisha vient vous consulter pour connaître ses droits en tant que "veuve" de Salim.

B. Estelle est divorcée et perçoit une pension alimentaire versée par son ex-mari John. Celui-ci vient vous voir car il veut savoir dans quelles circonstances il pourrait cesser de s'acquitter de ce devoir de paiement de pension alimentaire envers son ex-femme.

Question 2

Kevin et Maya ont respectivement 19 et 16 ans et ils s'aiment. Ils viennent d'apprendre que Maya est enceinte et ils veulent se marier. Ils n'arrivent pas à décider s'ils doivent attendre la majorité de Maya avant de se marier.

A. Le fait que Maya soit une riche héritière rend la situation plus compliquée car sa mère veut protéger les intérêts de sa fille. La mère de Maya vient vous consulter pour savoir comment s'y prendre.

B. Maya quant à elle insiste pour épouser Kevin car, tout en voulant que son enfant soit un enfant légitime, elle veut aussi rassurer sa mère quant à sa fortune. Conseillez-la.

Question 3

Anya est une femme d'affaires prospère qui vient vous consulter à la suite

de nombreux problèmes conjugaux. Elle sait que tôt ou tard il faudra mettre un terme à son mariage avec son mari Jay. Ensemble ils ont deux enfants de 7 et 9 ans.

A. Son principal souci, c'est qu'elle veut conserver le nom de son mari qu'elle a adopté depuis qu'elle a débuté son "business".

B. Anya veut aussi avoir la garde de ses deux enfants et conserver le logement familial qui appartient à Jay.

Conseillez Anya sur ses droits et expliquez lui dans quelles circonstances elle peut conserver le nom de son mari.

Question 4

Mary and Sam are married since 2000; Mary is of South African nationality whereas Sam is a Mauritian. In the month of January 2016, following several conjugal problems, Sam has lodged a divorce petition against Mary on the ground of "faute". Mary is resisting the said divorce petition. Due to a new incident which Sam believes will be relevant and material for his divorce petition, he now wants to add same to his petition. Mary is objecting to an amended divorce petition being filed.

She had also applied for a protection order against Sam on the ground that she had been subjected to domestic violence. She was granted a protection order for a period of one year against Sam who now wants to appeal against the decision of the district magistrate granting the said protection order.

A. Sam seeks your advice on the following matters:

1. The potential grounds on which he can rely in order to have the protection order set aside on appeal;
2. What is the procedure for such an appeal?

3. He also wants to know what are the chances for an amended divorce petition to be granted by the Court.

B. Sam no longer wishes to retain the services of his previous legal representatives and wants to retain your services.

Explain the procedure to be adopted for a change of legal representatives.

Question 5

Jane grew up with Pierre, Paul, Anne and Sacha whom she has always considered as her siblings. Jane was born in 1949 and has been a natural-acknowledged child of Anthony, the father of Jane, Pierre, Paul, Anne and Sacha. However, she has never been acknowledged by her mother Claire and the name of her mother does not appear on her birth certificate.

After the death of Claire, Pierre, Paul and Anne refused to give Jane a share in the property left by their mother claiming that Jane is not their sister. According to them, Jane is not even their father's daughter.

A. Jane comes to see you in as much as she wants to be recognised as her mother's daughter. On what grounds can she do it and what will be the procedure to be adopted.

B. Discuss what would be the situation if Anthony was still alive and wanted to enter an action "en désaveu de paternité" in respect of Jane?

PART II. ARBITRATION

Question I

Ethicon Ltd had entered into a contract with Express Ltd for the supply of shoes to its workers. Express Ltd has refused to take delivery of the shoes which it had ordered from Ethicon Ltd, on the ground that the shoes do not meet the specifications set out in the contract.

The contract refers to an annexed document signed by both parties which reads as follows:

“Arbitration

The parties hereby agree that all disputes arising between the parties in connection with the validity, interpretation or termination of the contract for supply of shoes shall be conclusively resolved by an arbitration in accordance with the arbitration laws of Mauritius. The arbitrator shall be appointed by mutual agreement of parties and the decision of the arbitrator shall be final and binding”

Ethicon Ltd has, pursuant to the arbitration clause, caused a notice to be served on Express Ltd declaring a dispute since it maintains that all the shoes have been manufactured as per the specifications listed in the contract. It has also stated in the notice that the dispute must be referred for determination by an arbitrator and has suggested the names of 4 arbitrators.

Express Ltd has replied that there is no arbitral clause which binds the parties to arbitration. It has, following the service of a *mise en demeure*, entered an action before the Commercial decision of the Supreme Court claiming damages for breach of contract from Ethicon Ltd.

Discuss:

(1) whether, and how, an arbitrator may be appointed:

(2) in what circumstances and subject to what conditions may the execution of the "*sententia arbitrale*" be opposed or challenged by any party who is dissatisfied with the arbitral award.

Question 2

(a) Super Holdings Ltd is a company incorporated in the British Virgin Islands. On 10 March 2015, it had invested USD 1,000,000 in Tropico Ltd which is an offshore company incorporated in Mauritius and which holds a global business licence. The Mauritius company in turn holds shares in several companies abroad with investments which are worth several millions of US Dollars.

Super Holdings Ltd has entered an action before the Commercial Division of the Supreme Court in Mauritius claiming the payment of a sum of USD 1,500,000 for breach of an agreement by Tropico Ltd. The basis for the action is a clause in the Investment Agreement which provides that "Tropico Ltd shall provide the exit of the Investors (Super Holdings Ltd) of their entire investment in Tropico Ltd for an aggregate sum of 1.5 million USD, the whole amount to be paid by Tropico Ltd at latest on 10 March 2018".

The agreement also contains a clause which stipulates the following:

"In the event of any dispute or difference arising between the parties relating to or arising out of this Agreement, the said dispute or difference shall be submitted to arbitration in Singapore"

In order to ensure the confidentiality of its business interests, Tropicco Ltd wishes that the matter be referred to arbitration. This is not acceptable to Super Holdings Ltd.

Discuss the legal principles and procedure for determining whether the matter should be referred to arbitration.

(1,) Super Holdings Ltd fears that in the meantime Tropicco Ltd may dispose of its shares in a manner which may considerably reduce its ability to pay the sum of 1.5 million USD.

Advise Super Holdings Ltd as to any action for interim measures which it may enter against Tropicco Ltd in order to safeguard its interest.