

Course Code: L203(M) 2005

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **LAW OF PERSONS AND THE FAMILY**

COURSE CODE : **L203**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **(1) ANSWER ANY FOUR (4) QUESTIONS.**
(2) ALL QUESTIONS CARRY EQUAL MARKS.
(3) REFER TO DECIDED CASES AND LITERATURE WHERE APPROPRIATE.

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1

- (a) In general the right to marriage is restricted by the Marriage Act, 1964. Under certain conditions some persons may marry while others may not marry at all. Identify and briefly discuss the latter class of persons. [8 marks]
- (b) Your cousin who recently graduated from a technical college is contemplating marrying his long-time girlfriend in terms of the Marriage Act, 1964. Describe to your cousin the procedure of banns and special licence indicating which of the two you would prefer and why. [8 marks]
- (c) Describe to your cousin the marriage ceremony (or wedding) under the Marriage Act, 1964, indicating who must be present, who does or says what to who in the ceremony. [9 marks]
- [25 MARKS]**

QUESTION 2

- (a) Francis and Lesley have been bosom friends from about the time they entered primary school. The two are now both 18 years of age and have fond feelings for each other. Francis who has over the years not developed any feelings for or friendship with persons of the opposite sex, somehow regards himself as a woman and at ease with performing most female roles. Convinced that marriage to Lesley would be the ideal thing for him in a world of uncertainties, Francis approaches you for advice on -
- (i) whether he and Lesley can just move into premises of their own as husband and wife. [3 marks]
- (ii) whether he and Lesley can get married. [5 marks]
- (iii) whether he should undergo an operation to make him female so as to facilitate a marriage to Lesley. [7 marks]
- (b) Mamba and Mrs. Mamba were married in community of property and had three children, the last of whom, Sipho, was born ten months after the death of Mamba. Unfortunately Sipho's mother also died during the birth of Sipho. The Master of the High Court who is now faced with winding up the estate of Mamba wants to know whether Sipho should be counted as a child of Mamba. Advise the Master. [10 marks]
- [25 MARKS]**

QUESTION 3

- (a) Describe the legal capacity of a married woman under the common law of Swaziland in respect of contracts. [10 marks]
- (b) Describe -
- (i) the invariable consequences which affect the personal status, and [7 marks]
- (ii) the variable consequences which affect the property regime of married persons under the law of Swaziland. [8 marks]
- [25 MARKS]**

QUESTION 4

- (a) What is the meaning and significance of domicile? [7 marks]
- (b) Discuss, with examples, the domicile of -
- (i) Origin [9 marks]
- (ii) Choice [9 marks]
- [25 MARKS]**

QUESTION 5

- (a) What is a 'limping' contract? [5 marks]
- (b) Describe the rise and fall of the so called 'benefit' theory in South African law. [20 marks]
- [25 MARKS]**

QUESTION 6

- (a) What is an antenuptial contract? [5 marks]
- (b) How can an antenuptial contract be made binding to persons who are not parties to it? [10 marks]
- (c) In what situations can a postnuptial execution and registration of an antenuptial contract be authorised? [10 marks]
- [25 MARKS]**

QUESTION 7

- (a) Discuss the following defences to adultery -
- (i) condonation [5 marks]
 - (ii) connivance [5 marks]
 - (iii) collusion [5 marks]
- (b) With respect to marriage, distinguish between 'divorce' and 'annulment', giving two grounds on which divorce or annulment can be based. [10 marks]

[25 MARKS]