

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

FINAL EXAMINATION PAPER, MAY 2006

TITLE OF PAPER : THE LAW OF PERSONS AND THE FAMILY

COURSE CODE : L203

TIME ALLOWED : THREE (3) HOURS

- INSTRUCTIONS:**
- (1) ALL FOUR (4) QUESTIONS ARE COMPULSORY**
 - (2) MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS.**

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

Mr C.S. Motsa's will contains the following clause:

"My son, Muzi, inherits E50 000-00 and his children who are alive at the date of my death, each inherits E20 000-00".

Mr Motsa dies on 26 December 2004 which ironically is also his birthday. Muzi's third child, Saphiwa, is born on 6 September 2005, which incidentally happens to be a day of great significance in the history and calendar of the Kingdom of Swaziland. Muzi has two other children, Khaya and Siphokazi.

- (i) Who will inherit from Mr Motsa? Explain your answer with reference to authority. [10]
- (ii) What would be the position if Saphiwa died while his mother was giving birth to him? [5]
- (iii) Assume that Saphiwa's mother had been involved in a motor vehicle accident during her pregnancy; assuming further that Saphiwa had been subsequently born alive with severe brain damage, which led to his death three hours after birth. The accident having being caused solely by the negligence of the driver of the other motor vehicle, and now Muzi's wishes to institute an action for damages on behalf of his son. Would this action be successful? Explain briefly. [10]

(25 marks)

QUESTION 2

Melvin, a pilot, is hired to transport food to war-torn Iraq. The light aeroplane disappeared without a trace and he has not returned home. His family has found out that his plane was shot down. Ten months after his disappearance the family successfully approached the High Court for an order presuming his death in terms of the common law. Melvin's estate is divided among his heirs. A year later Melvin's wife, Isabel, approaches the same court for an order to dissolve her marriage, and the court grants same. Thereafter she marries Juan. Six months after her remarriage Melvin arrives home, having survived the plane crash.

- (i) Do you think that the court erred in granting the presumption death order so soon after Melvin's disappearance? Explain briefly.

[10]

- (ii) How will the fact that Melvin is not dead impact on the division of the estate? Explain relevant authority. [10]
- (iii) How will Melvin's home coming affect Isabel's second marriage? [5]
- (25 marks)

QUESTION 3

Zwelibanzi and Ntobeko, both Swazi citizens who are domiciled in Swaziland, decide to get married in Canada during their holiday there.

- (i) Which legal system determines whether they may enter into a valid marriage? Explain your answer. [10]
- (ii) Which legal system determines their matrimonial property system? Explain your answer. [10]
- (iii) Suppose Zwelibanzi and Ntobeko are validly married to each other and that Zwelibanzi is domiciled in Mbabane. Can Ntobeko acquire a domicile of choice elsewhere? Very briefly explain your answer with reference to authority. [5]
- (25 marks)

QUESTION 4

Briefly discuss the three variations of a marriage out of community of property. (25 marks)