

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

**FINAL EXAMINATION PAPER, MAY 2007**

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

**COURSE CODE : L203**

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

**INSTRUCTIONS: (1) ANSWER QUESTION 1 WHICH IS COMPULSORY  
AND ANY OTHER THREE (3) QUESTIONS OF  
YOUR CHOICE**

**(3) MARKS FOR QUESTIONS OR PARTS OF A  
QUESTION ARE SHOWN IN BRACKETS.**

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GRANTED BY THE INVIGILATOR.**

### **QUESTION 1**

Below follows a list of clauses from testators' wills. In each instance C was already conceived at the time of the testator's death but was only born alive after the testator's death. Indicate in which one of the following examples C would not be able to inherit:

- a) "I bequeath my estate to my children". At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.
- b) "I bequeath my estate to my children A and B, and any other child(ren) that my wife expects at the time of my death". The testator had two children, A and B and his wife was expecting a third child, C.
- c) "I bequeath my estate to my children who are alive at the time of my death". At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.
- d) "I bequeath my estate to my children A and B." At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.

**[25 marks]**

### **QUESTION 2**

Mthoko, who was born in Germiston and at the age of three moved to Bloemfontein with his parents, has recently qualified as a lawyer. He dislikes living in Bloemfontein intensely, but is unsure where he would like to live. He decides to spend a month in Cape Town while he decides where he would like to settle permanently. Where is Mthoko domiciled? Fully substantiate your answer.

**[25 marks]**

### **QUESTION 3**

Gabi, a seventeen (17) year old minor, concluded a contract with a certain Mrs Thring, an adult, to rent a bachelor flat. In terms of the contract, Gabi has to pay Mrs Thring the exorbitant amount of E3, 500.00 per month rental for the flat. Gabi's father was unaware of this contract. When Gabi later had difficulty in paying the rental, she phoned her father and told him about the contract, whereupon he gave her money to pay six months' rental. Discuss in detail whether, and if so, under what circumstances, the contract between Gabi and Mrs Thring can be set aside by the Court.

**[25 marks]**

### **QUESTION 4**

Mr and Mrs Mdluli, wealthy farmers from the south, have a 21 years old son, Sibhaha, who is currently earning no income because he is a full time Uniswa student. Sibhaha and his girlfriend, Nconco, have an extra-marital son, Sbu.

- a) Mr and Mrs Mdluli are not sure whether they are still legally obliged to support Sibhaha now that he has reached majority. Advise them in this regard with reference to case law.

{15 marks}

- b) Since Sibhaha earns no income, he cannot assist Nconco in making a contribution towards Sbu's maintenance. Mr and Mrs Mdluli are of the view that they are not responsible for Sbu's maintenance. Explain to them the position of the law in Swaziland, with reference to recent constitutional developments in the country.

{10 marks}

**Total:[25 marks]**

### **QUESTION 5**

The fundamental idea underlying the accrual system is that the spouses who are married in terms of this system must share what they amassed together during the subsistence of their marriage. Certain assets, however, are excluded from the accrual, which means that the value of these assets is not taken into account when the accrual is determined. Name and discuss the assets referred to here.

**[25 marks]**