

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, NOVEMBER 2010

TITLE OF PAPER: THE LAW OF PERSONS & THE FAMILY

COURSE CODE: L203

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: (1) ANSWER QUESTION ONE (1) AND QUESTION FOUR (4) WHICH ARE COMPULSORY AND ANY OTHER TWO (2) ADDITIONAL QUESTIONS OF YOUR CHOICE

(2) MARKS FOR QUESTIONS OR PARTS THEREOF ARE INDICATED IN BRACKETS

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QUESTION 1

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The case of *Nicol v Nicol 1948 (2) SA 613(C)* marked an important turning point in the law relating to the acquisition of a domicile of choice in South Africa and by extension to all Roman Dutch Common Law jurisdictions.

Briefly, yet concisely, narrate the facts and the ratio that emanated from this case.

[25 marks]

QUESTION 2

Mlungisi is 20 years old. He concludes a contract with Mrs Mashaba, an adult, to buy a second hand computer for E7, 200.00 (Seven Thousand Two Hundred Emalangeni). Mlungisi brings Mrs Mashaba under the wrong impression that he is twenty-one (21) years old by producing a forged identity document. Mlungisi pays a deposit of E2, 000.00 (Two Thousand Emalangeni) and Mrs Mashaba delivers the computer to him. Mlungisi now refuses to pay the balance of the purchase price on the ground that he is a minor and therefore not liable in terms of the contract.

- (i) A minor who makes a misrepresentation (like Mlungisi did in this question) commits a delict and can therefore be held delictually liable. This means that the prejudiced party has a claim for damages against the person committing the delict (minor). What are the requirements for delictual liability under these circumstances?

(15 marks)

- (ii) Can Mlungisi recover his deposit? Briefly, explain your answer with reference to legal authority.

(10 marks)

TOTAL: [25 marks]

QUESTION 3

- (a) All wives whether subject to the marital power of their husbands or not, and whether married in or out of community of property, are entitled to make contracts for necessaries for the joint house and its members without reference to their husbands. For this right to be available two (2) conditions must co-exist. Briefly discuss these conditions.

(10 marks)

- (b) The fact that a married woman is subject to her husband's marital power does not mean that she is completely barred from entering the business or professional world. However, to do this she still requires the permission of her husband, after which she can become to be known as a public trader. To be a public trader, the wife must satisfy three (3) primary requirements. Briefly discuss these requirements.

(15 marks)

TOTAL: [25 marks]

QUESTION 4

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Whilst it may be undesirable, it is however inevitable that some couples who get married will soon or later be walking their way down to the divorce court. Desertion is one of the grounds for divorce in Swaziland. Discuss with clear precision the different components of desertion and the requirements thereof.

[25 marks]

QUESTION 5

The Marriage Act of 1964 provides for prescribed formalities which must be complied with before, during and after the conclusion of a civil rites marriage. Briefly discuss these formalities.

[25 marks]