

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2011

TITLE OF PAPER: THE LAW OF PERSONS & THE FAMILY

COURSE CODE: L203

TIME ALLOWED: 3 HOURS

**INSTRUCTIONS: (1) ANSWER QUESTION 1 FROM SECTION A
AND ANY OTHER QUESTION OF YOUR
CHOICE FROM THIS SECTION**

**(2) ANSWER BOTH QUESTIONS FROM
SECTION B**

**(3) QUESTIONS MUST BE ANSWERED IN
THEIR CHRONOLOGICAL ORDER**

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

**THIS PAPER MAY BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR**

SECTION A

QUESTION 1

The two landmark cases of *Pinchin V Santam Insurance Company Limited 1963 (2) SA 254 (W)* and *Road Accident Fund V Mtati 2005 (6) SA 215 (SCA)* set in motion very important legal principles pertaining to the protection of the *nasciturus*. Discuss the ratio and legal principles developed in these cases in the context of the *nasciturus* rights.

[25 marks]

QUESTION 2

Usually a person's death is proved by means of a death certificate, however, there are situations in which a person simply disappears and there is no evidence that he or she is dead. In such situations, there is nobody in respect of which a doctor can issue a death certificate and nobody can testify that the missing person is actually dead. In such cases an application must be made to the High Court for an order that the missing person be presumed dead.

- (a) What are the typical factors that will be considered by the Court in an application for a presumption of death Order?

[15 marks]

- (b) Discuss the consequences of a presumption of a death order?

[10 marks]

TOTAL: [25 marks]

QUESTION 3

Nandi emigrated from South Africa to Swaziland, where she acquired a domicile and later married. When she was 57-years-old, she died of heart complications while on holiday in Botswana. She was survived by her husband (Musa) and her son, (Mlandvo), and she died without a will.

Her estate consisted of the following:

- Stocks and shares in Botswana
- Cash, furniture and cars in Swaziland
- Valuable immovable property in South Africa

In terms of the law of South Africa, the child inherits the whole estate, whereas in terms of the law of Botswana, the spouse inherits the whole estate. In terms of the law of Swaziland, the surviving spouse inherits the equivalent of E500, 000.00 (Five Hundred Thousand Emalangeni) and the child inherits the residence of the estate, if any.

How will the estate devolve? Your answer must be supported by legal authority.

[25 marks]

SECTION B

QUESTION 4

Luke, a wealthy businessman, and Ncedo a school teacher, became engaged on the 31 December 2010. Ncedo was so excited about the wedding and the carefree life she would have with Luke, that she immediately bought a wedding dress to the value of E5, 000.00 (Five Thousand Emalangi). Last week, Ncedo was shocked to discover that, while on a business trip to Cape Town, Luke had married his ex-girl friend Nontobeko.

Ncedo wishes to know from you whether she can claim anything from Luke for expenses incurred for the wedding dress and for the fact that she will no longer be marrying a wealthy man. Advise Ncedo in this regard and substantiate your answer with reference to case law.

[25 marks]

QUESTION 5

Mr. and Mrs Magwaza, wealthy farmers from the Lubombo sugar belt, have a 21-year-old son, Mncobi who is currently earning no income because he is a full time Uniswa student. Mncobi and his girlfriend, Ayanda have an extra-marital son, Bandzile.

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

[10 marks]

- (b) Since Mncobi earns no income, he cannot assist Ayanda in making a contribution towards Bandzile's maintenance. Mr. and Mrs. Magwaza are of the view that they are not responsible for Bandzile's maintenance. Explain to them, with reference to case law as to what is the position of the law in this regard.

[15 marks]

TOTAL: [25 marks]