

UNIVERSITY OF SWAZILAND

112

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, NOVEMBER 2013

TITLE OF PAPER: THE LAW OF PERSONS & THE FAMILY

COURSE CODE: L203

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: (1) ANSWER ALL FOUR (4) QUESTIONS

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

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## QUESTION 1

113

Noncedo Malema, a highly expectant woman was involved in a near fatal motor vehicle accident in Matsapha in February this year. She suffered severe external injuries, was treated at the Raleigh Fitkin Memorial Hospital in Manzini where she was rushed to shortly after the accident. She was treated and discharged after a week and she has fully recovered save for a few scars which will remain a permanent feature of herself.

The foetus in her womb at the time of the accident was eventually born in April 2013 and was named Nkos'iyazi. Nkos'isiyazi has been diagnosed with severe brain damage which is directly linked to the accident her mother was involved in earlier in the year. The accident was later confirmed in a police report to have been caused by the sole negligence of Mr Luvo Didiza who was driving the other motor vehicle.

Noncedo now wants to sue Mr Didiza for damages in respect of the injuries suffered by her son. She has come to you for legal advice. Advise her accordingly in relation to the following issues:

1. In their chronological and logical order, name the principal requirements which must be met for the application of the *nasciturus* fiction.

[15 marks]

2. Is the *nasciturus* rule applicable in the case intended to be instituted in favour of Nkos'iyazi against Mr Didiza?

[15 marks]

114  
3. Would your answer have differed or remained the same had you been asked the same question in 2 above in 2004?

[15 marks]

TOTAL: [45 marks]

### QUESTION 2

The case of *Tsabile Mamba vs Bhadala Mamba*: High Court Case No. 1451/2009 dealt with two critically important issues directly hinging on domicile. Briefly discuss the facts and the ratio of this case and in the process highlight these critical issues referred to above.

[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 household and its members without reference to their husbands. For this right to be exercised, certain specific conditions must exist. Briefly discuss these conditions.

[10 marks]

115

(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 *publica mercatrix*. To be a public trader, the wife must satisfy three (3) primary requirements. Briefly discuss these requirements.

[15 marks]

**TOTAL: [25 marks]**

#### QUESTION 4

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]

**Total Possible Marks: [120]**