

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2015

PAPER TITLE: THE LAW OF PERSONS AND THE FAMILY

COURSE CODE: L203

TIME ALLOWED: THREE (3) HOURS ONLY

INSTRUCTIONS:

- 1. ANSWER ANY FOUR QUESTIONS OF YOUR CHOICE.**
- 2. ALL QUESTIONS CARRY EQUAL MARKS.**

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INVIGILATOR, DO NOT OPEN THIS PAPER.**

QUESTION ONE

Prudence and Raphael both Swazi citizens are domiciled in Swaziland. They have been living in South Africa for the past 20 years. They decide to get married in Australia during their holiday there.

- (a) Which legal system determines whether Prudence and Raphael may enter into a valid marriage? Support your answer with reference to authorities.
- (b) Which legal system determines Prudence and Raphael's marital property regime? Support with relevant authorities.

[25 Marks]

QUESTION TWO

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 THREE

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]

[25 marks]

QUESTION FOUR

(a) Define Domicile and explain its relevance in the law of persons and family? [10 Marks]

(b) With the aid of decided cases, explain the nature and duration of a domicile of dependence. [15 Marks]

[25 Marks]

QUESTION FIVE

(a) Discuss the nature and content of the universal community of property marriage in the context of Swaziland. [10 Marks]

(b) What significant improvements has the South African legal system introduced in this kind of marriage property regime? [10 Marks]

(c) Briefly explain what you understand by the accrual system of marriage. [5 Marks]

[25 Marks]

QUESTION SIX

(a) Briefly explain how the following factors may affect a person's status:

(i) A juristic act performed by a person during a *lucidum intervallum*?

[5 Marks]

(ii) Prodigality; and

[5 Marks]

(iii) Insolvency

[5 Marks]

(b) Yolanda, a 17-year old minor is sent by her parents who live in Zimbabwe to pursue her Bachelor of Laws degree at the University of Swaziland. Yolanda's parents give her a monthly stipend of **E500.00** which she feels is inadequate for all her needs. She decides to secure a part-time job in one of the garment factories in Matsapha. In order to be closer to work, she also rents a house there and commutes to and from the University. She opens a bank account into which her employer, Zwangendaba Garments, deposits her salary of **E8 000.00** on a monthly basis. She is now in rental arrears for three months in the sum of E3 000.00. The cheque she drew in favour of her landlady, Melissa, was dishonoured by the bank and marked "refer to drawer".

Melissa wants to sue Yolanda for the arrear rentals and to compel her to comply with clause 10 of the lease agreement, that is not to bring alcoholic beverages on the leased premises. Melissa has approached you for legal advice, advise her fully.

[10 Marks]

[25 Marks]