

**UNIVERSITY OF SWAZILAND**

**DEPARTMENT OF LAW**

**LAW OF PERSONS AND THE FAMILY MAIN EXAM PAPER- SEMESTER I**  
**2016**

<b>Programme of Study</b>	<b>:</b>	<b>LLB II</b>
<b>Title of Paper</b>	<b>:</b>	<b>Law of Persons &amp; the Family</b>
<b>Course Code</b>	<b>:</b>	<b>L203</b>
<b>Time Allowed</b>	<b>:</b>	<b>3 Hours</b>
<b>Examiner</b>	<b>:</b>	<b>Dr. M.N. Shongwe</b>

**INSTRUCTIONS:**

1. Answer any four (4) Questions
2. In answering any question, note that the quality of the content, use of case law, clarity of expression and legibility of handwriting are absolutely essential.
3. Begin each question on a new page.

**THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).**

### **QUESTION 1**

Mrs Mabuza, an expectant mother, was injured in a motor vehicle accident. Her child was subsequently born with cerebral palsy. As a result of the brain damage the child will never be able to take care of herself. The accident was caused by the sole negligence of the driver of the other motor vehicle.

- (a) What do you understand by the *nasciturus* fiction? [6 Marks]
- (b) Name the two requirements for the operation of the *nasciturus* fiction. [4 Marks]
- (c) Can the *nasciturus* fiction be applied in this case? Discuss with reference to authority. [15 Marks]

[Total: 25 Marks]

### **QUESTION 2**

- (a) How does one determine whether a person is legally dead? [10 Marks]
- (b) Mrs X has successfully applied for a presumption of death order with regard to her husband who has been missing for 20 years. What will the situation be if it becomes clear that Mr X did not die? Explain the legal position with reference to authority. [15 Marks]

[Total: 25 Marks]

### **QUESTION 3**

Sergio, a Mozambican national was engaged to marry Leiza who is also a citizen of Mozambique. Sergio left Mozambique and went to live in Manzini Swaziland, having always wanted to work there. He lived and worked in Manzini for two years. On many occasions he told his fiancé and extended family in Mozambique that he is happy in Swaziland and intends to remain there. On the third year Sergio went back to Mozambique to marry Leiza and on his arrival there he made arrangements for them to permanently relocate to Swaziland. After the wedding day they spent their honeymoon at the Sun International in Maputo Bay. At the end of the honeymoon they were practically penniless. Sergio had to walk back to Swaziland alone, promising his wife that he would send for her as soon as he could afford it. Indeed, his wife was able to join him a few months later. 10 years later, Sergio died intestate, leaving behind Leiza and their three children. In order for Leiza and her children to benefit from Sergio's estate, Leiza has to apply for a court order declaring that at the time of death Sergio, Leiza and their three children were all domiciled in Manzini, Swaziland. Discuss whether the Court will grant this order?

[25 Marks]

**QUESTION 4**

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 no dead body 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) Discuss with reference to case law what the typical factors are that will be considered by the Court in an application for a presumption of death Order.

[15 marks]

(b) Why is presumption of death considered to be a rebuttable presumption?

[5 marks]

(c) In terms of common law, who may apply for an order of presumption of death, and where can this application be made?

[5 Marks]

**[Total: 25 Marks]**

**QUESTION 5**

(a) When does legal personality begin? [1 Mark]

(b) Discuss the legal requirements for the beginning of legal personality. [4 Marks]

(c) What is the age of majority in Swazi law? [1 Mark]

(d) In our law there is a rule that the *nasciturus* of a father who died as a result of another person's delict may institute a claim for damages, owing to loss of maintenance after his or her birth, against the person who caused the death of his or her father.

(i) In what case was this rule laid down? [1 Mark]

(ii) On what basis will the damages be calculated in such an instance? [2 Marks]

(e) What do you understand by the concept "emancipation"? [2 Marks]

**(f)** The duty of care & support between parent and child is said to be reciprocal. Under what circumstances can a child be compelled to exercise the duty of support towards his/her parent? [4 Marks]

**(g)** Between husband and wife, the common law duty of support is said to endure *stante matrimonio*. Briefly discuss what this duty entails. [5 Marks]

**(h)** Define adultery. [2 Marks]

**(i)** Explain what remedy is there for breach of promise to marry? [3 Marks]

**[Total: 25 Marks]**

**END OF PAPER**