

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, NOVEMBER 2017

PAPER TITLE: THE LAW OF PERSONS (LLB FULL-TIME)

COURSE CODE: LAW 205

TIME ALLOWED: THREE (3) HOURS ONLY

TOTAL MARKS: [100]

INSTRUCTIONS:

- 1. ANSWER ALL QUESTIONS.**
- 2. MARKS ARE INDICATED IN BRACKETS NEXT TO EACH QUESTION.**
- 3. THIS QUESTION PAPER CONTAINS SIX PAGES. PLEASE ENSURE THAT YOU HAVE THEM ALL.**

UNLESS PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR, DO NOT OPEN THIS PAPER.

Question 1

(a) Mrs. Mantashe, 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.

- (i) What do you understand by the *nasciturus* fiction? (3)
- (ii) Name the two requirements for the operation of the *nasciturus* fiction. (3)
- (iii) Can the *nasciturus* fiction be applied in this case? Discuss with reference to decided cases. (5)

(b) Jele's will contains the following clause: "My daughter Ntombezinhle inherits E60 000 and her children who are alive at the date of my death, each inherits E20 000". J dies on 5 October 2016. Ntombezinhle's third child Z is born on 5 November 2016. Ntombezinhle has two other children Thandokuhle and Carlota. Can the *nasciturus* fiction be applied in this case? Discuss with reference to case-law. (5)

Question 2

Joao Xikwembu, a Mozambican national living in Swaziland is a renowned business consultant who travels around the world advising business persons and organisations. He went missing in May 2012. He left his family on the 20th May 2012 on a business trip to Langkawi, Malaysia, but he had indicated he would go via Seychelles to make a brief presentation there. News sources

2012/05/21

around the world reported that a Malaysian airbus MH370 went missing on the 21st May 2012 with 239 passengers on board. The plane departed from the Aéroport de la Pointe Larue (Seychelles International Airport) at 7:15 p.m. and the last communication between the plane and the Seychelles air traffic control took place 15 minutes after the departure of the MH370 plane. Investigations revealed the co-pilot had said “good night Malaysian 370”. A few minutes later, the plane's transponder, which communicates with ground radar, was shut down. No communication has been made between Xikwembu and his family since his departure on the 20th May 2012 and all efforts to locate him, including the famous “khumbulekhaya” program, have proved unsuccessful.

Xikwembu's wife, Mthandazo, has approached you for legal advice on whether she may enter into a new marriage and/or wind up the estate of her husband. Citing relevant case law, advise her on the following:

- (a) What legal remedy can Mthandazo seek before pursuing her wishes? **(2)**
- (b) Which court has jurisdiction to grant the remedy in (a) above? **(1)**

- (c) Discuss the factors to be considered by the courts in determining whether or not to grant the relief you have advised in (a) above. **(10)**

- (d) Should Mr. Xikwembu resurface at a later stage, the courts having granted the remedy you stated in (a) above, what should be the legal position of the parties and/or other third parties involved? **(12)**

Question 3

- (a) What is your understanding of the maxim *pater est quem nuptiae demonstrant* and what factors can one plead to rebut it? (10)

Question 4

What is your understanding of the following concepts in the context of the law of persons?

- (a) Unjust enrichment. (5)
(b) *Negotiorum gestio*. (5)
(c) *Restitutio in integrum*. (5)

Question 5

Hellena, a Mozambican national, is an illegal immigrant in Swaziland where she is employed by Tholukuthi as a sex-worker. For the past fifteen years she has lived and worked in Swaziland as a sex-worker. She likes the climate in Swaziland and the hospitality of the Swazi people and her dream is to make Swaziland her permanent home. Advise her fully on whether she can acquire a domicile of choice in Swaziland. (10)

Question 6

Phukeshe, aged 15 years old, attends secondary school at Finer Details Academy. He is the one and only son of Swaziland's multi-billionaire, Gegemthini. In order to enjoy the freedom he wants, and without his father's knowledge, the boy decides to pull out of boarding school to be a day scholar, renting a nearby flat at E4500.00 per month. He is now in rental arrears of E13500.00, having failed to pay rent for the past three months as he spends his money on expensive watches, alcohol and spoiling his many girlfriends. The landlord has instructed you to recover the rentals for him. Advise him on the enforceability of the contract. **(10)**

Question 7

Siphosethu Mamba is a six-year-old extra-marital child born to Tiphelale Simelane and Bandzile Mamba. She lives with her father in South Africa whilst her mother lives in Manzini in the Kingdom of Swaziland. Where is Siphosethu domiciled? Explain your answer briefly. **(5)**

Question 8

State whether the following statements are true or false. Each answer carries one mark.

- (a) The *nasciturus* fiction can be used to protect an unborn baby from being aborted.
- (b) The laws of Swaziland stipulate that an illegitimate child cannot inherit from its mother.
- (c) In order for birth to be complete, the baby must be viable.
- (d) A contract concluded by a person of unsound mind during a *lucidum intervallum* is valid.
- (e) The position that a woman subject to her husband's marital power lacks *locus standi in judicio* is unassailable under the laws of Swaziland.
- (f) There is a rebuttable presumption that an *infans* is *doli incapax*.
- (g) A minor who has benefitted from an invalid contract may still be sued on equity principles.
- (h) A prodigal may conclude an antenuptial contract without the assistance of his curator.
- (i) Both the *factum* and *animus* requirements must be satisfied for purposes of proving domicile by operation of the law.
- (j) All persons are equal before and under the law and, as such, they all have equal capacity in law.

(10)

THE END