

UNIVERSITY OF ESWATINI

DEPARTMENT OF LAW

LAW OF PERSONS MAIN EXAM PAPER- SEMESTER I 2018/2019

Programme of Study	:	LLB II
Title of Paper	:	Law of Persons
Course Code	:	LAW205
Time Allowed	:	3 Hours

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 Mr. X, the driver of the other motor vehicle.

Can the *nasciturus* fiction be applied in this case, and if so what will be the legal consequences of its application?

[25 Marks]

QUESTION 2

(a) How have the courts determined whether a person is legally dead? [15 Marks]

(b) What do you understand by the concept of *commorientes*? [3 Marks]

(c) Who is obliged to report the death of a person who died of natural causes? Refer to authority for your answer. [3 Marks]

(d) Who is obliged to report the death of a still born? [1 Mark]

(e) In what circumstances does the *Inquests Act* apply in respect of deaths? [3 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 *delatio*, Leiza and their three children were all domiciled in Manzini, Swaziland. Discuss whether the Court will grant this order? [25 Marks]

QUESTION 4

- (a) Discuss the requirements for the beginning of legal personality. [5 marks]
- (b) With reference to the case of *J and Another v Director General, Department of Home Affairs & Others* 2003 (5) SA 605 (D), discuss the statutory rules governing birth registration. [15 Marks]
- (c) May the parents of an unborn child validly agree that the father will not be held responsible for the maintenance of the child after his or her birth? Explain your answer referring to authority. [5 Marks]

[Total: 25 Marks]

QUESTION 5

A person may be born in one sexuality, but actually feel more at home as a member of the other sex. For that reason, some persons venture into the extent of conducting sex change operations. A person's sex and the change thereof may affect his/her marriage, contractual capacity, proprietary relations etc.

Discuss how the court in the classic case of *Corbett v Corbett (Otherwise Ashley)* 1970 (2) ALLER 33 dealt with the issue of how to determine a criterion of sex acceptable in law.

[25 Marks]

END OF PAPER