



80

**UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF LAWS/DIPLOMA IN LAW
RE-SIT EXAMINATION PAPER JANUARY 2020**

TITLE OF PAPER : LAW OF PERSONS

COURSE CODE : LAW 205 (IDE- LLB & Dip. Law)

TIME ALLOWED : THREE (3) HOURS

TOTAL MARKS : 100

INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS OF YOUR
CHOICE.

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

QUESTION 1

Mr Sibandze died and left a testamentary document wherein he stated that upon his death his estate “shall devolve upon my daughter and her children who are alive at the time of my death”. At the time of Mr Sibandze’s death, his daughter, Nosmilo had two sons; Sifiso and Sanele. However, Nosmilo was pregnant with her third son, Senzo who was born alive five months after Mr Sibandze’s funeral.

(a) What is meant by the *nasciturus* fiction and discuss the requirements that must be met for it to come into operation. (10 marks)

(b) Who stands to benefit from Mr Sibandze’s estate and why? Your answer must be supported with relevant case law. (15 marks)

[Total marks: 25]

QUESTION 2

(a) Medical science today does not accept that there is any one moment at which a human being dies. They see death as a process which can extend over a period of time and which involves the cessation of natural heart, lung and brain activity.

What is the accepted criterion of death suggested by medical experts?

(10 marks)

(b) What is meant by the term *commorientes*? Discuss the general rule regarding same and its significance to the law of persons?

Support your answer with relevant case law.

(15 marks)

[Total : 25 marks]

QUESTION 3

In the case of *Re Beaglehole 1908 TS 49 [5]*, Innes CJ stated that “there is no hard and fast rule of the Roman-Dutch law that a court is bound to presume death after a lapse of any fixed period of years”.

Critically analyse this statement in relation to whether a court may grant a presumption of death order based solely on the lapse of years since the person disappeared.

[25 marks]

QUESTION 4

(a) What is the meaning and significance of domicile? (5 marks)

(b) Discuss the *factum* requirement in relation to domicile of choice. (5 marks)

(c) Making reference to case law, fully discuss whether a soldier stationed outside his country of permanent residence, can acquire a domicile of choice in the country where he is stationed on service.

(15 marks)

[Total : 25 marks]

QUESTION 5

While Simiso was still a minor he inherited E1.2 Million Emalangeneni from his grandfather. The will in terms of which he inherited the money, provided that the money would remain in trust and that he would be entitled only to interest on the capital.

During Simiso’s minority his father in his capacity as his guardian, purchased a house in Thembelihle, Mbabane on Simiso’s behalf. There was no money at hand to pay for the house, so the parties agreed that the purchase price of E800,000.00 (Eight Hundred Thousand Emalangeneni) would be payable in instalments. The value of the property was no more than E600, 000.00 (Six Hundred Thousand Emalangeneni). Until Simiso’s majority the instalments were paid out of the interest of the sum he had inherited.

During his minority Simiso lived on the property with his parents. When he reached the age of majority, a considerable portion of the purchase price was still unpaid. The instalments would absorb most of the interest payable to him in terms of the will. He has now come to court and he wants to cancel the contract and claim repayment of the amounts he has already

paid in terms of the contract. He argues that he is entitled to claim *restitutio in integrum* on the ground that the contract has prejudiced him.

Will he succeed?

Your answer must be supported with relevant case law.

[25 marks]