

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATIONS, JULY 2005

TITLE OF PAPER : LAW OF PERSONS AND FAMILY

COURSE CODE : L 203

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER ANY FOUR (4) QUESTIONS.**
- 2. ALL QUESTIONS CARRY EQUAL MARKS.**
- 3. REFER TO DECIDED CASES AND LITERATURE WHERE APPROPRIATE.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION 1

- (a) Why is proof of death important in private law? [4]
- (b) Whilst abortion is a crime in Swaziland it may however be allowed in certain situations under the common law. In what situations may abortion be allowed? [8]
- (c) "In an appropriate case the [High] Court may, on the application of any interested party, grant an order presuming that a certain person is dead". (Boberg)

Discuss the above statement pointing out the factors that the court may take into account in deciding whether or not to grant the application. [13]

[25 MARKS]

QUESTION 2

- (a) What requirements must be satisfied in order that one person may be liable to support another? [6]
- (b) Discuss the duty of support -
 - (i) between husband and wife; and [10]
 - (ii) of a parent towards his/her child [9]

[25 MARKS]

QUESTION 3

- (a) How is parental power acquired and lost? [10]
- (b) "At common law, an agreement by which parents give custody and control of their child to another is unenforceable." (Boberg)

The above statement may nevertheless be enforceable under the Adoption of Children Act, 1952. Indicate -

- (i) four qualifications of persons to adopt; [4]
- (ii) four things which would satisfy the court to grant an adoption; [4]
- (iii) the primary aim and legal effect of an order of adoption. [7]

[25 MARKS]

QUESTION 4

- (a) What do you understand by 'restitutio in integrum' and where is this concept applicable? [7]
- (b) In modern law tacit emancipation is said to be 'controversial'. Why? [6]
- (c) "In modern law, the criterion of tacit emancipation is not whether the minor has his own establishment, it is whether he has achieved economic independence and autonomy". (Boberg).

Discuss this, statement with reference, inter alia, to Dickens v Daley 1956 (2) SA 11.

[12]

[25 MARKS]

QUESTION 5

- (a) What is meant by 'parental power'? [5]
- (b) On the basis of the decisions in cases such as Calitz v Calitz 1937 AD 56 and Fletcher v Fletcher 1948 (1) SA 130 AD, discuss the situations in which the High Court may interfere with parental power at common law. [10]
- (c) What do you understand by the notion of 'child in need of care'? [10]

[25 MARKS]

QUESTION 6

- (a) What three elements are embraced in the concept of marital power in its widest sense? [9]
- (b) How may marital power be terminated or suspended? [4]
- (c) Discuss any three common law safeguards against the abuse of the marital power.

[12]

[25 MARKS]

QUESTION 7

Write a critique of sections 7, 24 and 25 of the Marriage Act 1964, pointing out any need to amend or reform these sections.

[25 MARKS]