

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2009

TITLE OF PAPER: THE LAW OF PERSONS & THE FAMILY

COURSE CODE: L203

TIME ALLOWED: 3 HOURS

- INSTRUCTIONS:**
- (1) ANSWER QUESTION ONE (1)
SECTION A AND QUESTION FOUR (4)
FROM SECTION B AND ANY OTHER TWO
**(2) ADDITIONAL QUESTIONS OF YOUR
CHOICE FROM ANY SECTION.****

 - (2) MARKS FOR QUESTIONS OR PARTS
THEREOF ARE INDICATED IN BRACKETS**

**THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR**

SECTION A

QUESTION 1

Mr Skweyiya's last will and testament contains the following clause:

"My daughter Ngwane, inherits E100 000 and her children who are alive at the time of my death, each inherits E50 000".

Mr Skweyiya dies on 24th March 2008. Ngwane's third child Lutfo, is born on 18 January 2009. Ngwane has two other children, Lusutfu and Lusekwane.

(a) Who will inherit from Mr Skweyiya?

Explain your answer with reference to authority.

(20)

(b) Below follows a list of clauses from testators' will. In each instance C was already conceived at the time of the testator's death, but was only born alive after the testator's death. Indicate and briefly explain in which one of the following examples C would not be able to inherit:

- (i) "I bequeath my estate to my children." At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.
- (ii) "I bequeath my estate to my children A and B, and any other child (ren) that my wife expects at the time of my death." At the time of his death, the testator had two children, A and B and his wife was expecting a third child, C.
- (iii) "I bequeath my estate to my children who are alive at the time of my death." At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.

- (iv) "I bequeath my estate to my children A and B." at the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C. (5)

TOTAL: [25 MARKS]

QUESTION 2

Gebhuza, who was born in Mbabane from indigenous Swazi parents, at the age of seven (7) years moved to Johannesburg with his parents. He is now 24 years old and has recently qualified as a medical doctor. He dislikes living in Johannesburg with his whole heart but is yet unsure where he would like to live. He decides to spend a month in Cape Town while he decides where he would like to settle permanently. Where is Gebhuza domiciled?

[25 MARKS]

QUESTION 3

Rogers and Carol, both Swazi citizens who are domiciled in Swaziland, and have been living in South Africa for over 16 years, decide to get married in Canada during their holiday there.

- (i) Which legal system determines whether Enziwe and Carol may enter into a valid marriage? Explain your answer with reference to authority? (10)
- (ii) Which legal system determines Enziwe and Carol's matrimonial property system. Explain your answer? (5)

- (iii) Assuming this couple returns from Canada after marriage, acquire South African domicile and later on they want to divorce, which country's courts can deal with their matter and in accordance with which country's laws?

(10)

TOTAL: [25 MARKS]

SECTION B

QUESTION 4

- (a) Discuss the nature and content of the universal community of property marriage in the context of Swaziland.

(10)

- (b) What significant improvements and/ or amendments has the South African legal system introduced with regards to the same marriage regime?

(10)

- (c) Briefly explain what you understand by the accrual system of marriage?

(5)

TOTAL: [25 MARKS]

QUESTION 5

- (a) Discuss the factors that may render a civil rites marriage voidable at the instance of either party.

(15)

- (b) Should the procreative potential of a spouse to a civil rites marriage be the defining characteristic of conjugal relationships in our society? Discuss.

(10)

TOTAL: [25 MARKS]

QUESTION 6

(a) Briefly discuss the three (3) ways by which a civil rites marriage can be terminated in Swaziland.

(10)

(b) Adultery is one of the main grounds for divorce in Swaziland. What does it constitute and what are the defences open to be raised by the defendant against this ground?

(15)

TOTAL: [25 MARKS]