

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, NOVEMBER 2016

PAPER TITLE: THE LAW OF PERSONS

COURSE CODE: LAW 205

TIME ALLOWED: THREE (3) HOURS ONLY

TOTAL MARKS: [50]

INSTRUCTIONS:

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

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

QUESTION 1

- (a) There are various types of domicile in our Roman-Dutch common law. Name them and briefly state the requirements of each of these types of domicile. **(10)**

Question 2

Nigel a wealthy businessman of Mbabane dealing in second-hand cars enters into a contract of sale with Judith, a 17-year old daughter of Qophulwazi. In terms of the contract of sale, Nigel sells to Judith a second-hand Volvo S40 at a discount of E15 000.00 (Fifteen Thousand Emalangen). The actual value of the car at the time of conclusion of the contract was E60 000.00 (Sixty Thousand Emalangen). During the negotiations prior to the conclusion of the contract, Judith misrepresented to Nigel that she was a major. However, it was beyond doubt clear to Nigel that Judith is actually a minor. Judith concluded the agreement all by herself. Upon signing the written agreement between the parties, Nigel immediately delivers the motor vehicle to Judith, the latter having paid no deposit. Judith then sells the car to her friend, Lerato, for the sum of E68 000.00 (Sixty Eight Thousand). She spends E20 000.00 of the money on a lounge suit and the remaining E48 000.00 on a holiday in Dubai with her friends, without giving Nigel her money.

With reference to authorities advise Nigel on the following:

- (a) Can Nigel sue Judith for the purchase price on the contract? **(10)**
- (b) Under the unjust enrichment remedy, to what extent, if any, has Judith been unjustly enriched? What is this remedy about? **(5)**

- (c) Assuming that at the time Judith sold the car to Lerato, she had just celebrated her 21st birthday, would your answer to (a) above remain the same? (5)

QUESTION 3

Usually a person's death is proved by means of a death certificate, however, there are situations in which a person simply disappears and there is no evidence that he or she is dead. In such situations, there is nobody in respect of which a doctor can issue a death certificate and nobody can testify that the missing person is actually dead. In such cases an application must be made to the High Court for an order that the missing person be presumed dead. Citing relevant authorities, answer the following questions:

- (a) What are the typical factors that will be considered by the Court in an application for a presumption of death Order? (5)

- (b) What is the legal position in cases where it later turns out that the person presumed to be dead is in fact alive? (5)

QUESTION 4

Ntuthuko is a well-known alcoholic and pathological gambler from Elokhwazaneni area in the Manzini district. He is a notorious scammer within the Elokhwazaneni chieftdom as various business people within this area have been swindled by him of large sums of money which he also used in gambling. On the 15th March 2016 the High Court of Swaziland issued an order declaring him a prodigal. On the 31st May 2016 he wedded his long-time girlfriend, Joy, in a colourful ceremony at the Mangaung Cathedral. Prior to the solemnisation of the marriage, Ntuthuko and Joy entered into an ante nuptial contract.

- (a) What is the effect of the order of the High Court issued on the 15th March 2016 on Ntuthuko's contractual capacity? **(5)**
- (b) Is the marriage between Ntuthuko and Joy valid? **(2)**
- (c) If the marriage would be valid, is the marriage in or out of community of property? **(3)**

THE END