



PROGRAM : LLB/BA (LAW)/BCOM (LAW)
SUBJECT : **LAW OF PERSONS AND THE FAMILY**
CODE : PER0000/LPF41YO
DATE : EXAM 3 NOVEMBER 2021
DURATION : FOUR HOURS
WEIGHT : 50:100 (of final mark)
TOTAL MARKS : 70

EXAMINER : PROF. AE BONIFACE AND DR. W ROSENBERG
MODERATOR : PROF. M. WATNEY
NUMBER OF PAGES : 3 PAGES

INSTRUCTIONS TO CANDIDATES:

1. Answer all the questions on the answer paper (document). Provide relevant authority (case law and/or legislation) where applicable. Provide reasons for your answers.
2. Please write your surname, initials and student number on the answer paper.
3. Your answer paper must be loaded onto Blackboard under the “assignment” section.
4. You will have 4 hours to complete the exam, and your answers must be submitted within the allocated timeframe.
5. You may not seek assistance of a fellow student or the tutor. You may not use any part of another students answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty applies to this test. In regard to the assessment, the normal academic integrity rules apply. For example, this means that you cannot cut-and-paste material other than your own work as answers for this assessment. By undertaking this online assessment, you will be deemed to have made the following declaration:
“I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorized assistance in this assessment item”.

QUESTION ONE

Write down the missing word/s (one mark per space):

- 1.1. The Law of Persons is defined as being part of the _____ law that regulates the coming into being of a _____ subject.
- 1.2. A natural subject's legal subjectivity begins at _____.
- 1.3. Section 1(1) of the _____ 51 of 1992 defines birth as when a child is born alive.
- 1.4. The _____ can be used to protect the interests of the unborn in the case of succession.
- 1.5. If the continued pregnancy will endanger a woman's life then she may terminate the pregnancy after the _____ week, where the medical practitioner has consulted with _____.
- 1.6. When considering if the adoption of a child is valid the _____ of the child must be taken into account.
- 1.7. Section _____ of the Constitution deals with the best interests of the child.
- 1.8. A minor is incapable of being a _____ of an insolvent estate.
- 1.9. _____ means spending time with the child, visiting or communicating via e-mail or telephone calls.
- 1.10. _____ means that a parent can consent to the transfer of immovable property belonging to the child.
- 1.11. In this case the Supreme Court of Appeal held that where a minor has entered into an antenuptial contract where they were not assisted by their parent or guardian the antenuptial contract is void: _____.
- 1.12. Here the court found that because the minor had misrepresented that he was a major that he could then not rely on *restitutio in integrum*: _____.
- 1.13. In this matter the Supreme Court of Appeal held that somatic (brain stem) death is the moment of death in terms of our law: _____.

[15]

QUESTION TWO

Discuss the status of a child born to unmarried parents in South African law, also explain the provisions of the Children's Act 38 of 2005 that deal with the parental responsibilities and rights of unmarried parents.

[10]

QUESTION THREE

Thabo and Jessica are married out of community of property without the accrual system. They have been married for 20 years and for 10 years Jessica has been a housewife looking after the three children born of the marriage. Jessica is afraid that upon dissolution of the marriage she may be adversely affected. Thabo told Jessica that she has made no contribution to the marriage and will leave with nothing.

3.1. Advise Jessica on what she may request in terms of the relevant sections of the Divorce Act and discuss the relevant case law. (7)

3.2. Thabo and Jessica have heard that friends of theirs mediated their divorce and they approach you wanting more information about the process of mediation in South Africa. Explain what Family Mediation is; what the advantages and disadvantages of Family

Mediation are and compare Western-style Family Mediation to African-style Mediation and refer to the works of South African authors. (10)

3.3. Thabo and Jessica inform you that they were not married in terms of a customary law marriage but they were married in terms of Muslim law. Explain what aspects would need to be present when they married for the marriage to be recognized as a valid civil law marriage. (3)

[20]

QUESTION FOUR

4.1. Karabo and Steven are married and have been trying for years to conceive without success. They want to try artificial insemination of a donor's sperm to fertilize Karabo, however they are concerned that the donor may acquire parental responsibilities and rights in respect of the child. Advise the couple and refer to the relevant section of the Children's Act 38 of 2005. (5)

4.2. Discuss the case of *DE v RH [2015] ZACC 18* where you highlight the facts, the legal question, the reasons for the court's decision and the court's decision. (5)

(5)

[10]

QUESTION FIVE

Thembi and Jason are in the process of a divorce after 6 years of marriage. Thembi moved back in with her mother and Jason will remain in their house until after the divorce. Since Thembi has moved in with her mother they have noticed Jason loitering outside her mom's house, making calls to their phones and also keeping watch at Thembi's workplace. He has also been spotted outside her mother's home late at night. Thembi is afraid and wants your advice on what she can do.

5.1. Which piece of legislation is applicable here? (2)

5.2. Does Jason's behaviour fall within the definition of domestic violence in terms of the above mentioned act? (3)

5.3. Explain the application process for an interim and then final protection order. (10)

[15]

TOTAL: 70 MARKS
