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| FACULTY | FACULTY OF LAW | | |
| DEPARTMENT | PRIVATE AND PROCEDURAL LAQ | | |
| SUBJECT | LAW OF PERSONS | | |
| SUBJECT CODE | LPPE 3501 | | |
| DATE | JUNE 2020 | | |
| DURATION | 3 HOURS | MARKS | 100 |

WINTER TERM EXAMINATIONS

EXAMINER: Mr. P.N SHOOPALA
MODERATOR:

This question paper consists of 4 pages including the cover page.

Instructions

- Read the questions carefully
- **Section A is compulsory and answer any THREE (3) questions from Section B**
- Each question carries 25 marks
- Underline or highlight sources.

SECTION A [25]

COMPULSORY

Question 1

L's will contains the following clause: "My daughter L inherits R60 000 and her children who are alive at the date of my death, each inherits R20 000".

A dies on 5 October 2001. L's third child X is born on 5 November 2001. A has two other children W and V. **[25]**

- a) Can the nasciturus fiction be applied in this case? Discuss with reference to authority. **[20]**
- b) Who are entitled to inherit from L? **[5]**

SECTION B [75]

(ANSWER ANY THREE (3) QUESTIONS)

Question 2

Read the following scenario and answer the questions that follow:

Xavier and Yvonne, both Namibian citizens who are domiciled in Namibia, decide to get married in Canada during their holiday there. **[25]**

- a) Which legal system determines whether Xavier and Yvonne may enter a valid marriage? Explain your answer. **[5]**
- b) Which legal system determines Xavier and Yvonne's matrimonial property system? Explain your answer. **[5]**
- c) Suppose Xavier and Yvonne are validly married to each other and that Xavier is domiciled in Pretoria. Can Yvonne, being a married woman, acquire a domicile of choice elsewhere in terms of South African law? Very briefly explain your answer with reference to authority. **[15]**

Question 3

Chloe Narises, a 17-year-old girl, was sent to Windhoek to attend University of Namibia (UNAM). She was residing in a student apartment in Windhoek West whereby her father paid monthly rent amounting to N\$ 7 000.00. Within four (4) months she complained about noise and disturbances from her neighbours who attended university, and this affected her schoolwork and interrupted her sleep

patterns. She decides to cancel her lease agreement at Mont Piona Student Complex. Chloe finds new accommodation and concludes a contract with Mr. Dlamini, to rent a bachelor flat in a complex located in Eros. In terms of the contract Chloe must pay Mr. Dlamini an amount of N\$ 8 500.00 per month rent for the flat. Chloe's father was unaware of the contract.

Later, when Chloe had difficulty in paying the rent, she contacted her father and told him about the contract, whereupon he gave her money to pay six months' rent. Discuss in detail whether, and if so, under what circumstance, the contract between Chloe and Mr. Dlamini can be set aside. [25]

Question 4

Critically analyse the case of *Road Accident Fund v Mtati* [2005] 3 All SA 340 (SCA). [25]

Question 5 [25]

Question 5.1

Mr X has been missing for 10 years since the light aeroplane in which he was travelling disappeared without a trace off the coast of Henties Bay. Mrs X has trouble administering her husband's large estate. She applies for a presumption of death regarding her husband, but her application is unsuccessful. Advise her on possible solutions to her problem. [15]

Question 5.2

Discuss how intoxication affects a person's capacity to act. [10]

Question 6

Andrew is 16 years old. He concludes a contract with Mr Warikandwa, an adult, to buy a second-hand car for R30 000. Andrew brings Mr Warikandwa under the false impression that he is over 18 years old by producing a forged identity document. Andrew pays a deposit of R3 000 and Mr Warikandwa delivers the car to him. Andrew now refuses to pay the remainder of the contract price on the ground that he is a minor and therefore not liable in terms of the contract. Answer the following questions on this set of facts: [25]

- (a) The generally accepted view is that the minor who has falsely misrepresented himself or herself as an adult should be held liable in these circumstances, but there is no

consensus on what the basis for this liability should be. There are two possibilities.
What are these possibilities? **[5]**

- (b) Would you say that it is acceptable to hold the fraudulent minor contractually liable in these circumstances? Substantiate your answer. **[5]**
- (c) A minor who makes a misrepresentation, commits a delict and can therefore be held delictually liable. This means that the prejudiced party has a claim for damages against the person committing the delict (the minor). What are the requirements for delictual liability in these circumstances? **[5]**
- (d) Is Mr Warikandwa entitled to accept Andrew's statement that he is of age, or is he obliged to enquire into the truth of Andrew's statement? Explain briefly. **[10]**

GOOD LUCK

TOTAL MARKS 100
