INTERNAL EXAMINER : MS W. BANOOBHAI

INDEPENDENT MODERATOR : PROFESSOR W. FREEDMAN

INSTRUCTIONS

1. Please make sure that your writing is legible.
2. This paper consists of FOUR (4) pages, please make sure you have all the pages.
3. There are FIVE (5) questions in this examination.
4. All questions must be answered.
5. Refer at all times to relevant case law.
QUESTION 1
Thabo is a nine year old child whose parents are divorced. He lives with his grandmother in Port Elizabeth. His father lives in Johannesburg and his mother in Cape Town. He spends every alternate school holiday with his father.

1.1 Where is Thabo domiciled? Explain with reference to authority.

[7 Marks]

1.2 What are the requirements for a domicile of choice?

[3 Marks]

[Total Q1: 10 Marks]

QUESTION 2
Adele Stone’s husband Mark is a deep sea diver. After Malaysian airline flight MH 370 disappeared over the Indian Ocean, he joined an expedition to find the wreck. Following a day of diving in very deep water, he did not return to the surface and all efforts to find him were unsuccessful. It has been two years since the incident. Adele now approaches you for advice on the following issues:

2.1 She wants to approach a court to ask for an order of presumption of death pertaining to her husband. She would like you to outline the correct procedure that must be followed in order to obtain such an order.

[6 Marks]

2.2 Adele wants to know what sorts of factors a court will consider when deciding whether to grant an order of presumption of death or not?

[8 Marks]

2.3 Adele wants to know what will happen to her husband’s property once an order of presumption of death is granted.

[2 Marks]
2.4 Adele informs you that she would like to marry her boyfriend Sam. She wants to know if she may do so after the court grants an order of presumption of death. Explain the legal position.

[4 Marks]

[Total Q2: 20 Marks]

QUESTION 3

Junaid married Farhana in March 2013. Between January and May 2015 Junaid worked in the London office of his employer. During this time Farhana, who remained in South Africa, had an extramarital affair with Feroz. In early June 2015, Farhana discovered that she was six weeks pregnant. Junaid knows that he cannot be the father of the unborn child because he was living in London at the time Farhana fell pregnant. When he confronted her with this fact, she told him that the law presumes that he is the father of the child because they are married and that there is nothing he can do about this. Junaid now approaches you for advice.

3.1 He wants to know the name of the legal principle in terms of which he is presumed to be the father of the child. He also wants you to explain this principle to him.

[5 Marks]

3.2 Junaid wants to know whether there is any way in which he can prove that he is not the father of the child.

[10 Marks]

[Total Q3: 15 Marks]
QUESTION 4

Jenny is 17 years old. She concludes a contract with Arnold, who is an adult, to buy his laptop for R3000. In order to conclude the contract, Jenny told Arnold that she was 18 years old. Jenny pays a deposit of R600, given to her by her aunt for her birthday, and Arnold allows her to take the computer home with her. A month later Arnold requests payment of the balance of the purchase price. Jenny refuses to pay the rest of the purchase price on the ground that she is a minor and therefore cannot be held liable. She also wants to reclaim her deposit.

Advise Arnold, with reference to authority, whether he can recover the contract price, or any price, from Jenny. In your answer you must also indicate whether Jenny would be able to reclaim her deposit.

[Total Q4: 15 Marks]

QUESTION 5

Distinguish between the contractual capacity of a person who is mentally ill and the contractual capacity of a person who has been declared a prodigal.

[Total Q5: 10 Marks]

TOTAL FOR PAPER: 70 MARKS