

Course Code: L305 (S) 2005

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2005

TITLE OF PAPER : **LAW OF SUCCESSION AND ADMINISTRATION OF ESTATES**

COURSE CODE : **L305**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **1. ANSWER A TOTAL OF FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**
2. NOTE QUESTION ONE IS COMPULSORY.

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1 (Compulsory)

You are an attorney and you receive instructions from Thoko Zulu whose husband Mongi died 3 months ago leaving a substantial estate. Your client had been married to her late spouse in terms of Swazi Customary Law. Your client informs you that her brothers in-law want to help themselves to the estate and are insisting that it must be referred to Swazi Law and Custom for administration.

Advise your client fully.

[25 MARKS]

QUESTION 2

(A) In what circumstances may the Master of the High Court make the following appointments:

- | | | |
|------|------------------|-----------|
| i. | Tutor Dative | (5 marks) |
| ii. | Curator Dative | (5 marks) |
| iii. | Curator Ad Litem | (5 marks) |

(B) What is the purpose of our system of Administration of Estates?

[10 marks]

[25 MARKS]

QUESTION 3

“The Swazi Customary Law of Succession, as it stands, is no longer appropriate for modern Swazi Succession.”

Discuss the rules governing succession under Swazi Customary Law suggesting recommendations for reform.

[25 MARKS]

QUESTION 4

Thabo Ngwenya appointed his son Max, to be his executor testamentary. Thabo Ngwenya met his untimely death whilst Max was still 14 years old. Will the Master of the High Court appoint him to be the executor of his late father's estate? Explain fully referring also to other people including juristic persons who are under similar legal disabilities as Max.

[25 MARKS]

QUESTION 5

Sections 69-95 of the Administration of Estates Act, 1902 lays down the law regarding the administration of the estates of minors and absentees. Give a full statement of what the law is in this regard.

[25 MARKS]

QUESTION 6

Busi is the only child of the deceased and in her view she ought to be the deceased's only heir. Busi, however, fears that she might not inherit in view of the terms of the deceased's will.

Advise her on her prospects of inheriting the deceased's estate in the following circumstances:-

- (a) The Will has the following clause: "I leave my farm to my daughter Busi subject to the condition that she obtains a B.Com degree". [10 marks]
 - (b) The Will bears no date. [5 marks]
 - (c) The Will was not written by the deceased himself, but by his Pastor who purported to have written it under the instructions of the deceased. [10 marks]
- [25 MARKS]**

QUESTION 7

Critically discuss the order of intestate succession to a deceased's estate from the first to the third parantela where there is a surviving spouse at common law. What happens where there is a complete failure of relations?

[25 MARKS]