

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION, MAY 2006**

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

**COURSE CODE :**                   **L 305**

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

**INSTRUCTIONS :**

- 1. ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**
- 2. QUESTION ONE IS COMPULSORY**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN  
GRANTED BY THE INVIGILATOR TO DO SO.**

### **QUESTION 1** (Compulsory)

Zakes Daka is a prominent auditor with a flourishing auditing company based in Manzini. He also had 40 head of cattle in the Mahebedla Chiefdom, and a handsome bank account with Nedbank in Manzini. In July, 2003, he executed a will in which he appointed his 27 year old daughter Zola, who is also a trained auditor, and known to be the apple of her father's eye, is his heiress to most of his valuable property including the auditing company's assets. Thoba and Langa (Sons of Zakes and brothers to Zola) were mentioned in the will only as beneficiaries of personal items such as household items and clothing. After the father's death they thought that Zola had been unduly favoured, and also that their late father had acted unfairly towards them. The two brothers have sought legal advice about the matter.

Advise Zola on the legal position and her chances of inheriting her father's estate in light of her brother's impending objections.

[25 MARKS]

### **QUESTION 2**

(a) Write an explanatory note on collation, indicating clearly the persons who must collate, and the type of property that must be collated.

[10 MARKS]

(b) Indicate the order of succession on intestacy where there are no descendants and no surviving spouse, paying particular attention to the following three situations:

- i. where both parents are alive (5 marks)
- ii. where one parent predeceases the intestate (5 marks)
- iii. where both parents predecease the intestate (5 marks)

[15 MARKS]

### **QUESTION 3**

(a) In Swaziland, inheritance is by choice, not compulsion. With examples discuss this assertion. (12 marks)

(b) The following bequest appears in Mthakathi's will:

"I leave my farm to my wife Yedwa. If she should remarry, the farm is to go to the trustees of the Ngwane National Liberation Congress (NNLC) or their successors in title".

How is the High Court of Swaziland likely to deal with such a bequest? (13 marks)

#### **QUESTION 4**

Write short notes on the following:

- i) Intestate Succession. (5 marks)
- ii) The office of Executor (5 marks)
- iii) The Certificate required by a re-marrying spouse (5 marks)
- iv) The problem of commorientes (5 marks)
- v) Soldiers' Wills (5 marks)

[25 MARKS]

#### **QUESTION 5**

In view of the provisions in the new Constitution of Swaziland, what are the effects of the law of Intestate Succession on the rights of illegitimate, adulterine and incestuous children?

[25 MARKS]

#### **QUESTION 6**

Write short notes on the following:

- (a) Curator bonis (5 marks)
- (b) Reporting of deaths (5 marks)
- (c) Tutor Dative (5 marks)
- (d) Curator a litem (5 marks)
- (e) Custody of estate pending issue of letters of administration (5 marks)

[25 MARKS]

#### **QUESTION 7**

State the requirements of the Master of High Court of Swaziland for the countersigning of foreign letters of administration.

[25 MARKS]