

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2007

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

COURSE CODE : **L 305**

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

TOTAL MARKS : **100**

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

After completing his studies at the Limpopo Medical Institute, where he specialised in paediatrics, Dr. Dube returned home, where he was appointed Chief Medical Officer at the Mkhweni Medical Centre, in Siteki. He met and fell in love with Zethu, a young nurse at the same hospital, and they got married at the Manzini Church of Zion. This marriage was blessed with three children, two girls and a boy.

Dr. Dube's father was the Chief of Lubulini and when he died, Dr. Dube succeeded to the position. He therefore, had to resign from his job at the medical centre, and went to live in the village, so that he could take on his chiefly responsibilities on a full time basis. The village elders soon provided him with three young maidens as "wives", which, according to them, was in keeping with Swazi Law and Custom. Zethu did not object, and was infact quite accommodating to the new additions to the family. Indeed, they felt at home at the royal homestead, and had children with Dr. Dube.

All was well until the day Dr. Dube died of natural causes. After the funeral a document was found tucked away in one of his desk drawers. The document was titled "My Last Will and Testament". It had some crossings, interlineations and amendments. At the foot of the document there was a single signature, apparently, that of the deceased. In terms of the document, half of the deceased's estate was to be shared by his "wives" equally, and the other half was to be shared by his children in equal portions.

Zethu is not happy with the document and believes that it is a forgery. She would like to know:

- i) The legal status of the document. (10 marks)
- ii) The entitlement of herself and her three children, if any, in the estate of the deceased. (15 marks)
Advise her on these two issues. [25 MARKS]

QUESTION 2

- (a) State the reasons for the submission that the Master's role is a judicial one. (5 marks)
- (b) What is meant by a curator bonis? What are the powers of the aforesaid curator? Under what circumstances is it necessary to appoint one? (5 marks)
- (c) Distinguish between a tutor and a curator. (5 marks)
- (d) What are the Master's powers in the event that there is competition for the office of executor dative? (5 marks)
- (e) On what grounds may an executor be removed from office. (5 marks)
[25 MARKS]

QUESTION 3

- (i) "The numerous class of persons who in wills or otherwise speak as if the office of language were to conceal their thought have no right to complain of being taken to mean what their language expresses."

Elucidate in relation to construction of wills. (15 marks)

- (ii) With the help of decided cases and examples, carefully distinguish between:-

(a) Pactum Succession and Collatio bonorum. (5 marks)

(b) Trust and Foundation. (5 marks)
[25 MARKS]

QUESTION 4

"When there is a will, it must be proved that the one who wrote that will is dead. A will means nothing while the person is alive, it can be used only after the person dies." Hebrews 9: 16-17.

Discuss in light of decided cases. [25 MARKS]

QUESTION 5

Some persons are qualified and others are disqualified from appointment as executors.

Discuss fully. [25 MARKS]

QUESTION 6

Your client, Lethu Mamba, was married to Siko Mamba under Swazi Law and Custom. Siko died on 2nd December, 2004 leaving a substantial estate which includes immovable property, insurance policies and company shares. He died intestate. Your client has instructed you to report the estate to the Master of the High Court. Lethu's in-laws object to this, arguing that their brother had been married under Swazi Law and Custom and, therefore, his estate should be referred to the aforesaid system of law for administration. The deceased was an indigenous Swazi. Advise your client.

[25 MARKS]