

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2008

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

COURSE CODE : **L305**

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

INSTRUCTIONS : **ANSWER ANY THREE (3) QUESTIONS.**

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

QUESTION 1

- (a) Your client, Veli, comes to you for advice. His Father's Will (Veli's father was Mr. Cele), is not in full compliance with Section 3 of the Wills Act, 1955 (relating to the formalities of executing a will). Veli is of the opinion that this document ought to be given effect, as he firmly believes that the document expresses his father's true intentions, regarding how he wished to have his estate wound up after his death.

Advise Veli on the position of the law, and explain to him how this position would be treated had South African law been applied to the matter.

[20 marks]

- (b) State what the penalty is for theft, destruction or concealment of wills. [5 marks]

[Total: 25 marks]

QUESTION 2

- (a) Why do you think that "death" and "survivorship" are important in the law of succession?

[10 marks]

- (b) Discuss eight reasons why a legacy may fail.

[15 marks]

[Total: 25 Marks]

QUESTION 3

Your client Sicelo has been appointed executor testamentary to the estate of his father Mr. John Shabangu. John Shabangu died on the 12th of December, 2006. The deceased was a resident of Nelspruit, Mpumalanga Province, in the Republic of South Africa, and left an substantial estate in this area, as well as in Swaziland.

Your client has furnished you with his South African letters of Executorship, and informs you that he wishes to commence the administration of the portion to his father's estate that is situated in Swaziland.

Advise your client on the legal requirements as stated by the Administration of Estates Act, 1902.

[25 MARKS]

QUESTION 4

Write short notes on the following:

- (a) remarriage of a surviving spouses (5 marks)
- (b) Tutors (5 marks)
- (c) Curators (5 marks)
- (d) Competition for the office of Executor (5 marks)
- (e) The nasciturus fiction (5 marks)

[Total: 25 Marks]

QUESTION 5

Certain people are disqualified from appointment as executors. State who these people are, and give reasons for their exclusion.

[25 marks]

QUESTION 6

Your client was married in terms of Swazi Law and Custom to Mr. Vukani Masango. Vukani was a Swazi by ethnicity, and he died on the 15th of November, 2005 leaving a substantial estate. Your client wishes to report the estate of her husband to the Master of the High Court, but her in-laws object to this course of action, arguing that the Master, has no jurisdiction over such an estate. Mr. Masango did not leave a will.

Advise your client on the foregoing explaining to her how different the position would have been if she and her husband had concluded a civil rites marriage, and how the law of intestate succession would have catered for her and her two sons.

[25 marks]

QUESTION 7

- (b) Give the requirements without which an alteration, deletion, or addition made in a will may not be valid. [10 marks]
- (c) Discuss Collatio Bonorum as a doctrine, and how it has been effected by Constitution of Swaziland 2005. [15 marks]

[Total: 25 marks]