

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, MAY 2009

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 (1) IS COMPULSORY.

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QUESTION 1 (COMPULSORY)

Jaha Mangwe is a prominent quantity surveyor with a flourishing surveying company based in Manzini. He also had fifty head of cattle in the Buka Chiefdom and a handsome bank account with the Standard Bank in Manzini. In July, 2004, he executed a will in which he appointed his twenty-five year old daughter Simile, who is also a trained quantity surveyor, and is known to be the apple of her father's eye, as his hieress to acquire or inherit his valuable property, including the surveying company's assets. Thokozani and Thuthukani (Jaha's sons) were mentioned in the will only as beneficiaries of personal items such as household items and clothing. After the death of Jaha, the sons thought that Simile had been unduly favoured, and that their late father had acted unfairly towards them. The two brother's have sought legal advice from you as they strongly believe that they ought to have received a "reasonable portion" from the estate of their late father.

Advise the brothers on the legal position, and their chances of success in their endeavours to challenge the will in a court of law.

[25 marks]

QUESTION 2

Lerato immigrated to Swaziland from South Africa. She died whilst on holiday in Spain. She is survived by a brother and two daughters. Her estate consists of three houses in Port Elizabeth, a block of flats and cash in Swaziland. Mpho, her brother, comes to see you from Port Elizabeth. He has been appointed executor of his sister's estate in South Africa. He wishes to attend to the winding up of the Swaziland portion of the estate.

Advise him on the legal requirements demanded by the Master of the High Court in respect of the winding up.

[25 marks]

QUESTION 3

"The meaning of S68 of the Administration of Estates Act, 1902 is far from clear".

Discuss.

[25 marks]

QUESTION 4

- (a) Discuss, with examples, the difference between succession per capita, and succession per stirpes. (15 marks)
- (b) Distinguish between dies cedit and dies venit. Use examples to help illustrate your understanding of the concepts. (5 marks)
- (c) Discuss the *Nasciturus* Fiction. (5 marks)

[Total: 25 Marks]

QUESTION 5

Discuss the rules of succession under the Swazi Customary Law, focusing on the problematic areas, and suggest possible reforms for implementation by our legislation.

[25 marks]

QUESTION 6

- (a) What do you understand by the term "Executor"? [5 mark]
- (b) Discuss the role of the holder of such an office, focusing on his duties, and shedding light also on the reason why some people are barred from holding this position. [20 marks]