

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2009

TITLE OF PAPER : LAW OF SUCCESSION AND ADMINISTRATION OF ESTATES

COURSE CODE : L305

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : 1. ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION ONE.

2. QUESTION ONE IS COMPULSORY.

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QUESTION 1 (COMPULSORY)

Rachel emigrated from Malawi, where she was born, and was raised in Swaziland, where she was domiciled, and eventually, married. Rachel died whilst on vacation in Zimbabwe, without leaving a will. Rachel is survived by her husband Masiko, and their two sons (Vika and Vukani). Rachel's estate on her death consisted of a house in Malawi, shares in a Namibia based company, a shopping complex in Matsapha, and cash at the Simunye branch of the First National Bank.

Keeping in mind the provisions of S68 of the Administration of Estates Act, 1902, advise the surviving relations as to their entitlement to Linda's estate.

[25 marks]

QUESTION 2

(a) "In Swaziland, inheritance is by choice, not compulsion". With examples, discuss this assertion. (10 marks)

(b) The following bequest appears in Mehluli's will.

"I leave my farm to my wife, Siphokazi. If she should remarry, the farm is to go to the trustees of the trustees of the Swaziland Youth Congress (SWAYOCO), or their successors in title".

How is the High Court of Swaziland likely to deal with such a bequest? (15 marks)

[Total: 25 Marks]

QUESTION 3

(a) In a will, Mihla appointed Phakamani Maswati (Pty) Ltd to administer his estate. Mihla clearly stipulated in his will that his estate should be directed towards the building of a home for AIDS orphans in the Hlatikulu area. Kholiwe, Mihla's wife, who is quite disgruntled at being disinherited, wishes to challenge this bequest.

Advise her on the possible grounds for challenging the will. (20 marks)

(b) Write on Soldier's Wills. (5 marks)

[25 MARKS]

QUESTION 4

Write short notes on:

- (a) *Modus* (5 marks)
- (b) *Codicils* (5 marks)
- (c) *Donatio Mortis Causa* (5 marks)
- (d) Vesting (5 marks)
- (e) Presumption of Death (5 marks)

[Total: 25 Marks]

QUESTION 5

- (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)

[Total: 25 Marks]

QUESTION 6

Discuss the methods by which our law of administration of estates seek to protect the rights of minors and absent people?

[25 marks]