

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, MAY 2011

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- 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)

Mehluko and Tengcina are close friends and confidantes. One day, whilst they were discussing their respective business pursuits, they decided to enter into an agreement in terms of which the first to die between them will leave all of her property to the survivor.

At the material point in time Mehluko was 79 years old, whilst Tengcina was 72 years old. These two old ladies met and formed a close bond when they were left by their respective children at an old age home in Big Bend in 1999. Tengcina's children (Max: 30 years old, and Phephile: 23 years old) are quite fond of their mother, and ensure that they pay her a visit at least once a month. Tengcina's children often make it a point that they sometimes take their mother away on holidays. Mehluko's children (Tembuso: 29 years old, Majaha: 20 years old and Sakhile: 35 years old) hardly visit their mother at all, and when they do, they scarcely stay for longer than half an hour. In fact, the last time Mehluko saw her children was in August, 2007, although they do occasionally telephone her.

Mehluko has as a result of the loneliness, found herself quite fond of her friend Tengcina, and was heavily dependant on her scotch-whiskey, which she kept in a flask. This flask was never far from her, and would often be found in one of her pockets.

Upon Mehluko's death, Tengcina produces the agreement, and seeks to inherit from Mehluko's E15 million estate. Mehluko's children wish to challenge the bequest, as they strongly believe that their mother lacked testamentary capacity as she was constantly inebriated, and was prone to deferring to Tengcina's opinion in most important matters. They also believe that Mehluko's age also affected her played a very crucial role in her decision to disinherit them.

Discuss the legal issues that arise from this scenario, and give an opinion on whether you think Tengcina's claim to Mehluko's estate can be upheld. Support your assertions with relevant case law. [25 marks]

QUESTION 2

(a) "In Swaziland, inheritance is by choice, not compulsion". Discuss this assertion, with examples. (15 marks)

(b) Mciniseli's will contains the following clause:

"I leave my farm to my wife Sanele. If she should remarry, the Farm is to go to Ms. Merry Widow, who operates a brothel in Manzini, or her successors in title".

In your considered opinion, how are the Swazi courts likely to deal with such a bequest? (10 marks)

QUESTION 3

Sesikhulile Matse is a prominent architect, who operates a flourishing practice in Manzini. Mr. Matse owns fifty head of cattle in the Lubulini Chiefdom, and a handsome bank account with Nedbank in Manzini. In March 2009, he executed a will in which he appointed his 25 year old daughter, Basego (who followed in her fathers' footsteps, and became an architect as well) to be the heiress to most of his valuable property, including the assets of the architectural firm.

Sekwanele and Joshua (Sesikhulile's sons from an earlier relationship) are both unemployed, and can often be found at the local drinking spot playing cards, and making a general nuisance of themselves. The two young men, aged 22 years, and 30 years respectively were mentioned in the will only as beneficiaries of personal items such as household items and clothing. Sesikhulile is also married to Nolwazi (who is Basego's mother) in community of property, but she was not mentioned at all in the said will. Sesikhulile had about a month prior to the execution of his will, caught Nolwazi, in a compromising position with one Mr. McDonald, and he had kicked her out of the marital home.

After Sesikhulile's death, Joshua, Sekwanele and Nolwazi learnt about the contents of the deceased's will, and formed the opinion that the will had favoured Basego in an undue manner. This threesome has sought legal advice on how they can legitimately have the will invalidated.

Advise Basego on the legal position, and her chances of inheriting her father's estate in light of the impending objections from her half siblings, and her mother.

(25 marks)

QUESTION 4

Write short notes on the following:

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| a) | Remarriage of a surviving spouse | (5 marks) |
| b) | Tutors | (5 marks) |
| c) | Curator ad Litem | (5 marks) |
| d) | Competition for the office of executor | (5 marks) |
| e) | The Nasciturus Fiction | (5 marks) |

QUESTION 5

Your client Mrs. Badu, (the first wife of the late Mr. Badu) was married in terms of Swazi Law and Custom to Mr. Eric Badu, a man of Nigerian origin. Eric died in Swaziland on the 12th of March, 2008, leaving a substantial estate. The estate is estimated to be in the region of E5 million in value. Mr. Badu had later married another woman, using the same customary rites, and both wives had four children each.

Your client wishes to report the estate of her husband to the Master of the High Court, but the younger Mrs. Badu objects to this course of action, arguing that the Master has no jurisdiction over this estate. Mr. Badu did not leave a will.

Advise your client on the foregoing set of circumstances, explaining to her; what the provisions of the Administration of Estates Act, 1902 stipulate as regards the situation. Would your client's situation have been better, had she and her husband concluded a civil rites marriage? How would the law of intestate succession catered have for Mr. Badu's family members?

[25 marks]

QUESTION 6

Ms. Colile Makama has been appointed executor testamentary of her late uncle's estate (Mr. Zwelethu Mhlanga). Mr. Mhlanga was an enterprising businessman, who resided in Polokwane in the Republic of South Africa. He left a substantial estate in this area, as well as in Swaziland.

Ms. Makama has approached your law firm, and has engaged your legal services. She has furnished you with her South African letters of Executorship, and informs you that she is desirous of administering and winding up the portion of her uncle's estate that is situated in Swaziland.

Advise your client on the legal requirements, and stipulations contained in the Administration of Estates Act, 1902.

[25 Marks]