

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

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SUPPLEMENTARY EXAMINATION PAPER, JULY 2011

- TITLE OF PAPER** : **LAW OF SUCCESSION AND ADMINISTRATION OF ESTATES**
- COURSE CODE** : **L305**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
1. **ANSWER A TOTAL OF FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**
 2. **QUESTION ONE IS COMPULSORY.**

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

QUESTION 1 (COMPULSORY)

Sipho Msweli was a Swazi man, was married to two wives. Each of his wives has three children, all of whom are minors, except for Mukelwe who is twenty-five years old. Mr. Msweli was a senior partner in a firm of civil engineers. The office of the firm is situated at Prestige Park, plot number 65, Madonsa Township, Manzini.

Mukelwe has approached you, seeking a legal opinion on issues regarding his late fathers' estate. According to Mukelwe, his father left a will which was signed by Mukelwe's stepmother, and Mr. Msweli's second wife. Apparently, she did this on Mr. Msweli's instructions, and by his direction as he was quite unwell at the time the will was executed.

Mukelwe informs you that the younger Mrs. Msweli together with her three children, and her brother have been appointed the sole beneficiaries of the late Mr. Msweli's estate which is estimated to be about E6 million in value. Mukelwe also informs you that the said will does not contain a certificate by a Commissioner of Oaths.

Mukelwe opines that this will should not be given effect, as he doubts that it expresses his late father's true intentions. Mukelwe is concerned that his mother and her children (he includes himself), were completely left out of the will.

The late Mr. Msweli's estate consisted of three houses in Cape Town, a dwelling house in the Madonsa Township, his shares in the engineering firm, and shares in various public companies both locally, and in the Republic of South Africa. Mr. Msweli also held an account at Nedbank, Mbabane branch, which contains about E2 million.

Mukelwe wishes you to help him challenge the validity of the will, and also to advise him on how the estate will be administered in the event that the will is held to be invalid by a competent court.

[25 marks]

QUESTION 2

(a) Write an explanatory note on Collation. How has this concept been affected by the Constitution of Swaziland, 2005. (15 marks)

(b) What is an executor, and what are his functions? (10 marks)

[Total: 25 Marks]

QUESTION 3

(a) In a will, Mavela Shongwe appointed Phuthumani (Pty) Ltd to administer his estate. Mavela stipulated in his will that his estate should be directed to the building of a home for the aged in the Siphocosini area. Sipiwe, Mavela's only daughter, has been completely disinherited. She 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)

[TOTAL: 25 Marks]

QUESTION 4

(a) 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)

(b) i) Distinguish, with examples between *dies cedit* and *dies venit* (5 marks)

- ii) Write on the presumption of death, and explain how this is an issue in the Law of Succession. (5 marks)

[Total: 25 Marks]

QUESTION 5

Certain people are disqualified from appointment as executors, tutors, curators and guardians under the Law of Administration of estates. Explain fully who these people are, and why they do not qualify. [25 Marks]

QUESTION 6

Vusi Mdluli, the testator of 76 years of age, executed a will wherein he completely disinherited his two sons, and bestowed his entire estate on Ms. Velile Mabuza, his 32 year old girlfriend. At the material time Mr. Mdluli had been bedridden for 6 months after having suffered a massive stroke, and was heavily dependant on a cocktail of morphine and anti-depressants which were prescribed by his doctor in order to ease his constant pain. Ms. Mabuza was Mr. Mdluli's sole care-giver, as she had initially been engaged as his personal nurse when he began to feel unwell a year before he was afflicted by the stroke.

Ms. Mabuza is considered by the testator's family to be a shameless floozy, who is ought to fleece the family of all their wealth. The testator's estate is estimated to be in the region of twelve million Emalangenzi in value.

The will which benefitted Ms. Mabuza was executed on the 25th of January, 2010, and it sought to revoke an earlier will which had named Mr. Mdluli's two sons as his heirs (executed on the 15th May, 1992). On the 12th of February, 2010 Mr. Mdluli, committed suicide.

Mr. Mdluli's son wishes to challenge the validity of the will, and has engaged your legal services. As his legal counsel, write a detailed legal opinion, supported by relevant case law, on the possible legal grounds upon which the will may be challenged. Give an exposition of which legal issues need to be alleged and proved, stating also what the chances of success are in your considered opinion.

[25 marks]