

UNIVERSITY OF SWAZILAND

201

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION, MAY 2012

**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.
2. QUESTION ONE IS COMPULSORY.**

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GRANTED BY THE INVIGILATOR TO DO SO.**

QUESTION 1 (COMPULSORY)

After completing his studies at the Limpopo Medical Institute, where he specialised in paediatrics, Dr. Dube returned home, where he was appointed Chief Medical Officer at the Mkhweni Medical Centre, in Siteki. He met and fell in love with Zethu, a young nurse at the same hospital, and they got married at the Manzini Church of Zion. This marriage was blessed with three children, two girls and a boy.

Dr. Dube's father was the Chief of Lubulini and when he died, Dr. Dube succeeded to the position. He therefore, had to resign from his job at the medical centre, and went to live in the village so that he could take on his chiefly responsibilities on a full time basis. The village elders soon provided him with three young maidens as "wives", which, according to them, was in keeping with Swazi Law and Custom. Zethu did not object, and was in fact quite accommodating to the new additions to the family. Indeed, all the wives felt at home at the royal homestead, and had children by Dr. Dube.

All was well until the day Dr. Dube died of natural causes. After the funeral a document was found tucked away in one of his desk drawers. The document was titled "My Last Will and Testament". It had some crossings, interlineations and amendments. At the foot of the document there was a single signature, apparently, that of the deceased. In terms of the document, half of the deceased's estate was to be shared by his "wives" equally, and the other half was to be shared by his children in equal portions.

Zethu is not happy with the document and believes that it is a forgery. She would like to know:

- i) The legal status of the document. (10 marks)
- ii) The entitlement of herself and her three children, if any, in the estate of the deceased. (15 marks)

Advise her on these two issues.

[TOTAL: 25 MARKS]

QUESTION 2

Vusi Mdluli, the testator of 76 years of age, executed a will wherein he completely disinherited his sons (Muzi and Kusa), and bestowed his entire estate on Ms. Vela Mabuza, his 32 year old girlfriend. At the material time Mdluli had been bed-ridden for 6 months after having suffered a massive stroke, and was heavily dependant on a cocktail of morphine, and anti-depressants which was 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 nurse when he began to feel unwell a year before he was afflicted by the stroke.

Ms. Mabuza is considered to be an immoral and shameless floozy, by the testator's family. They believe that she is out to fleece the family of all that they are worth. The testator's estate was estimated to be in the region of twelve million emalangeni 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 of May, 1992). On the 12th of February, 2010, Mr. Mdluli committed suicide.

Mr. Mdluli's sons wish to challenge the validity of the Will, and have engaged your legal services. As their legal counsel, write a detailed legal opinion, supported by relevant case law, on the possible grounds upon which the will may be challenged.

Give an exposition of what issues need to be alleged and proved, stating also what the chances of success are in your considered opinion.

[25 MARKS]

QUESTION 3

- (a) State the reasons for the submission that the Master's role is a judicial one. (5 marks)
- (b) What is meant by a *curator bonis*? What are the powers of the aforesaid curator? Under what circumstances is it necessary to appoint one? (5 marks)
- (c) Distinguish between a tutor and a curator. (5 marks)
- (d) What are the Master's powers in the event that there is competition for the office of executor dative? (5 marks)
- (e) What are the Master's powers where he discovers that property had devolved upon a minor who is without a legal guardian? (5 marks)

[25 MARKS]

QUESTION 4

Critically discuss the purpose and provision of the Intestate Succession Act, 1953, viewed in juxtaposition with Section 34 (1) of the Constitution of Swaziland, 2005. Suggest reforms for implementation by our Legislature.

[25 MARKS]

QUESTION 5

Some people are disqualified from appointment as executors, whilst others may validly be appointed to hold office.

Discuss fully, and shed light on the grounds that warrant the removal of an executor from office.

[25 MARKS]

QUESTION 6

Distinguish between:

- (i) *Pactum Succession* and *Collatio bonorum*. (10 marks)
- (ii) “When there is a will, it must be proved that the one who wrote that will is dead. A will means nothing while the person is alive, it can be used only after the person dies.”

Discuss in light of decided cases.

(15 marks)
[25 MARKS]