

UNIVERSITY OF SWAZILAND

205

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION, JULY 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
INCLUDING QUESTION ONE.**
 - 2. QUESTION ONE IS COMPULSORY**

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GRANTED BY THE INVIGILATOR TO DO SO.**

QUESTION 1 (COMPULSORY)

Musa, whilst on his death bed, asked his wife, to whom he is married in community of property, to write his Will. Musa, being too weak to summon the energy to sign the document, affixed his thumbprint on the last page. Velile and Sakhile were witnesses, and they duly appended their signatures after the thumbprint. No other signatures were reflected on the document apart from these.

In terms of Musa's will, Velile (his sister) and Sakhile (a neighbour) were each to receive a legacy of E15,000.00. The residue of the estate was to be given to his wife (Kholiwe), and his son (Vuka). Vuka was appointed executor.

Vuka wants to know from you:

- (a) Whether each beneficiary under this Will is indeed capable of benefiting under it as someone had once told him (Vuka) that the law provides that those who were present when his Father made his will were not capable of inheriting under the same Will. (15 marks)
 - (b) Whether the document is, indeed, valid in terms of the law? Explain also how his father's estate should be divided, if the Will does turn out to be invalid, or if some of the beneficiaries are found not to qualify. (10 marks)
- [25 MARKS]

QUESTION 2

Write short notes on the following:

- a) Remarriage of a surviving spouse (5 marks)
 - b) Curator ad litem (5 marks)
 - c) The Soldier's Will (10 marks)
- [25 MARKS]

QUESTION 3

Velaphi and Vukani are close friends and confidants. One day, whilst, they were discussing their respective business pursuits, they decided to conclude an agreement, in terms of which the first to die between them will leave all his property to the survivor.

Upon Velaphi's death, Vukani produces the agreement, and seeks to inherit Velaphi's property as per the contract. Velaphi was married in Community of Property to Sibongile, and the marriage was blessed with two children (Thulile – 6 years of age, and Bongile – 10 years of age).

Critically consider the prospects of Vukani getting all of Velaphi's property in terms of the said agreement. Discuss any Constitutional and other legal provisions which apply in this set of circumstances. [25 MARKS]

QUESTION 4

Your client is Sihle Gumbi. Her husband, Phila Gumbi has died intestate. His estate is quite substantial, comprising of a shopping complex, which is situated two kilometres away from the Gables Shopping Centre, in the Ezulwini area, Unit Trusts from African Alliance, various shares and debentures from companies based in Swaziland, Botswana and South Africa. He also had 1000 head of cattle at his farm at Mkhwakhweni.

Sihle wishes to report the estate to the Master of the High Court, however she is meeting resistance from her in-laws. Her in-laws insist that the Swazi Law and Custom should be used to administer the deceased's estate.

Advise your client.

QUESTION 5

- (a) Discuss four ways in which a testator may validly revoke his Will. (10 marks)
 - (b) "In Swaziland, inheritance is by choice, not compulsion". Discuss this assertion, with examples. (15 marks)
- [25 MARKS]

QUESTION 6

Discuss the common law duties of the executor, detailing also how such a person is appointed into the position. [25 MARKS]