

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2014

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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 1.**

**2. QUESTION ONE (1) IS
COMPULSORY.**

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GRANTED BY THE INVIGILATOR TO DO SO.**

QUESTION ONE (Compulsory)

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In a Will, Musa Zwane appointed Powermatic LTD to administer his estate, and to ensure that the provisions of his will were duly complied with.

Mr. Zwane stated, as one of the terms of his will, that three quarters of his estate was to be used to build a shelter for abused and vulnerable children at Vuvulane, in the Lubombo Region. The remainder of his estate, he provided, was to devolve upon his son Wandile, who is twenty-three years of age, on the condition that Wandile was to break-off his engagement to his fiancée Fatima who is of the Muslim faith.

In fact he stipulated, quite clearly in his will, that should Wandile fail to abide by his instructions, the remainder of the estate should benefit the Anti-Islam Alliance, which is an underground militia organisation that has been involved in a spate of bombings that have been targeted at a number of Mosques around the country.

In the meantime, Mr. Zwane's wife, Zenzile, to whom he was married in community of property, as well as his two daughters Philile and Phumlile, who are aged 12 years and 17 years, respectively, have been completely disinherited.

Mr. Zwane, passed away "in his sleep"; after he had been offered a suspicious narcotic-laced beverage by his son Wandile. The results of the post-mortem did not conclusively establish that this beverage was indeed the cause of death. Indeed, the cause of his death was stated to be "cardiac-arrest" in the medical report which was issued by the pathologist.

Zenzile wishes to challenge the will and approaches you for legal advice. Isolate all the legal issues, and advise your client accordingly, whilst referring to decided case law.

(25 MARKS)

QUESTION 2

"The meaning of S68 of the Administration of Estate Act, 1902 is far from clear."

Discuss this statement, and state what your own view is on this provision and its contents.

[25 MARKS]

QUESTION 3

Discuss the rules of Succession under the Swazi customary law. Focus on the problematic areas and suggest reforms for implementation by our legislature

[25 MARKS]

QUESTION 4

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Discuss with examples the following:-

- a) Donatio Mortis Causa (5 marks)
 - b) *Codicils* (5 marks)
 - c) The distinction between Succession per stirpes and Succession per capita. (10 marks)
 - d) The guardian's fund. (5 marks)
- [25 MARKS]

QUESTION 5

- a) What are the Master's powers in the event that there is competition for the office of Executor Dative. (5 marks)
 - b) Distinguish between a tutor and a curator. (10 marks)
 - c) Discuss the list of persons who are barred from holding the office of the Executor (provide reasons for their unsuitability). (10 marks)
- [25 MARKS]

QUESTION 6

Sihle and Zuko are business associates. One day, whilst discussing their various investments, they decided to conclude an agreement in terms of which the first to die between them would leave his property to the survivor.

Upon Sihle's demise, Zuko produces this document, which was duly signed by himself, and which also bears the thumb print of his associate Sihle. The document is neither witnessed, nor dated.

Critically discuss this set of circumstances and advise Zuko on his chances of successfully inhering from Sihle's estate. [25 MARKS]