

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2016

TITLE OF PAPER : LAW OF SUCCESSION AND ADMINISTRATION OF ESTATES

COURSE CODE : L305

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS

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QUESTION 1

What do you comprehend by the phrase “Letters of Administration? In your response, give a detailed account of the crucial duty of the holder of such letters to prepare Liquidation and distribution account. Explain also how such account is usually framed, including the contents of each part. [Total: 25 Marks]

QUESTION 2

a) A testator, Muhle, who died recently, left a will containing “a gift of E100,000, equally between my nephews”. At the date when the will is made, Muhle had three nephews, Phila, Sihle and Zakhe. Zakhe predeceased the testator, whilst Phila and Sihle are still alive. Two other nephews have since been born; Sibakhe was born five months after the testator’s death, and Cedza was born eleven months after Muhle’s demise.

Consider who is entitled to share in the legacy, would your answer be different if the gift had been E5,000 to each of my nephews”? [15 Marks]

b) Explain how death is reported. To whom is the report made and for what purpose?

[10 Marks]

[Total:25 Marks]

QUESTION 3

Linda emigrated from Malawi, where she was born, and was raised in Swaziland, where she became domiciled and married. Linda passed away whilst she was visiting friends in Namibia, without leaving a Will. Linda is survived by her husband Melusi and their son Samkelo. Linda’s estate on her death consisted of a house in Malawi, shares in a Namibian based company, a cottage in Manzini, and cash at the Matsapha branch of the First National Bank.

Keeping in mind the provisions of Section 68 of the Administration of Estates Act, 1902, advise the surviving relatives as to their entitlement to Linda’s estate.

[Total: 25 Marks]

QUESTION 4

How does our law of administration of estates protect the rights of minors and absent people?

[25 Marks]

QUESTION 5

Write notes on the following:

a) Soldier’s Wills [10 Marks]

b) Distinguish between an heir and a legatee in Roman Dutch Law [15 Marks]

[Total: 25 Marks]

QUESTION 6

- a) What would you do if you noticed that the will of a deceased person has been properly signed by the testator, and two witnesses, but has no certification clause”?
[10 Marks]
- b) What is the legal position where a testator has signed all the pages of his three (3) page Will, and so have his witnesses.
[10 Marks]
- c) Is there a difference between a *donation mortis causa* and a disposition of a testamentary nature
[5 Marks]

[Total: 25 Marks]

QUESTION 7

Describe the limits, if any, which are imposed by the law, on a testator's right to dispose of his property as he deems fit at his death
[10 Marks]

- a) Consider the extent to which the Roman-Dutch Law regards "*Pactum Successorium*" as being valid. Explain with reference to case law what legal tests are employed to determine "*pactum successorium*".
[15Marks]

[Total: 25 Marks]