

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

**TITLE OF PAPER : LAW OF SUCCESSION AND ADMINISTRATION OF
ESTATES**

COURSE CODE : L305

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS

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

QUESTION 1

Your client Sicelo has been appointed executor testamentary to the estate of his father Mr. John Shabangu. John Shabangu died on the 12th of December, 2012. The deceased was a resident of Nelspruit, Mpumalanga Province, in the Republic of South Africa, and left an substantial estate in this area, as well as Swaziland.

Your client has furnished you with his South African letters of Executorship, and informs you that he wishes to commence the administration of the portion to his father's estate that is situated in Swaziland.

Advise your client on the legal requirements as stated by the Administration of Estates Act, 1902. [25 Marks]

QUESTION 2

- a) What is the order of intestate succession where the deceased has left descendants and a surviving spouse. [10 Marks]
- b) Write short notes on the following:-
- i. Tutors [5 Marks]
 - ii. Curators [5 Marks]
 - iii. Competition for the office of Executor [5 Marks]

[Total: 25 Marks]

QUESTION 3

- a) On what grounds would you submit that the Master of the High Courts' role in a judicial one? [5 Marks]
- b) Certain people are disqualified from appointment as executors. State who these people are, and give reasons for their exclusion. [15 Marks]
- c) Discuss the commorientes problems. [5 Marks]

[Total: 25 Marks]

QUESTION 4

- a) Your client was married in terms of Swazi Law and Custom to Mr. Vukani Masango. Vukani was a Swazi by ethnicity, and he died on the 15th of November, 2015 leaving a substantial estate. Your client wishes to report the estate of her husband to the Master of the High Court, but he in-laws object to this course of action, arguing that the Master has no jurisdiction over such an estate. Mr. Masango did not leave a Will. Advise your client on the foregoing.

In advising your client, also tell her how the position would have been different if she and her husband had concluded a civil rites marriage, and further explain to her how the law of intestate succession would have catered for her and her two sons.

[25 Marks]

QUESTION 5

a) In Swaziland, inheritance is by choice, not compulsion. With examples discuss this assertion. [12 Marks]

b) The following bequest appears in Mthakathi's will:

"I leave my farm to my wife Yedwa. If she should marry, the farm is to go to the trustees of the Ngwane National Liberation Congress (NNLC) or their successors in title".

How is the High Court of Swaziland likely to deal with such a bequest?

[25 Marks]

QUESTION 6

Zakes Daka is a prominent auditor with a flourishing auditing company based in Manzini. He also had 40 head of cattle in the Mahebedla Chiefdom, and a handsome bank account with Nedbank in Manzini. In July, 2013, he executed a will in which he appointed his 27 year old daughter Zola, who is als a trained auditor, and known to be the apple of her father's eye, is his heiress to most of his valuable property including the auditing company's assets. Thoba and Langa (Sons of Zakes and brothers to Zola) were mentioned in the Will only as beneficiaries of personal items such as household items and clothing. After the father's death they thought Zola had been unduly favoured, and also that their late father had acted unfairly towards them. The two brothers have sought legal advice about the matter.

Advise Zola on the legal position and her chances of inheriting her father's estate in light of her brother's impending objections. [25 Marks]