

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2017

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 (1) IS
COMPULSORY.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR TO DO SO.**

QUESTION ONE (Compulsory)

Max who charged and convicted of culpable homicide. He accidentally shot and killed his wife while cleaning his pistol. It is common cause that he was drunk at the time, his level of intoxication however, was found by the Court to be at a level that he could still be able to appreciate what he was doing. He was found guilty, although the Court did consider other mitigating factors, and he received a sentence of three years imprisonment, wholly suspended. He was however disqualified from inheriting from his wife's estate, and he has approached you for legal advice. He argues that the *bloedige* hand maxim is obsolete in the case of negligent killings.

Advise Max of his prospects of success in a court application to have the said maxim set aside in his case. In your advice explain to him the gist of the maxim in general, and also giving him advice regarding other people who are regarded to be indignus in terms of our law. Cite relevant case law in support of all your assertions. (25 MARKS)

QUESTION 2

Consider the following clauses in Wills:

- i) "On my death the sum of E450,000.00 shall be invested in a fixed deposit account, and on the fifth anniversary of my death, this money is to go to my grandchildren."

Consider when the benefit devolves on the grandchildren? Is it when the Testator dies, or does this take place later? If it is on the Testator's death, which of his grandchildren (living or yet to be born) will acquire a vested right to the inheritance? If the benefit devolves on the grandchildren on the fifth anniversary of his death, what impact will this have on any grandchildren born, or conceived or on before the date of the fifth anniversary date? Will they inherit? Cite relevant legal authority.

(12 marks)

- ii) "I leave my farm to my son, Vika on condition that divorces his wife Sanelisiwe, and joins the religious cult of "Dark Angels" and ensures that the values of this cult are taught at the local primary school. He may not leave the local area of Dwaleni for any reason whatsoever, and should reside there permanently during his lifetime".

Consider the validity of the various conditions found in this clause, citing case law to support your assertions. (13 marks)

(TOTAL: 25 MARKS)

QUESTION 3

Sihle and Sebe are close friends and confidantes. One day as they were chatting about their respective business pursuits and family life, they decided to enter into an agreement in terms of which the first to die between them will leave his property to the survivor. Upon Sihle's death, Sebe produces the agreement, and seeks to inherit Sihle's property, as per the agreement. Advise Sihle's only daughter who is clearly aggrieved, and opposed to Sebe's claim to her mother's estate on the prospects of Sebe's success in getting the inheritance as per the contract. In your advice explain the various tests that are utilised the courts in determining the validity of contracts of this nature, explaining to her why the *Donatio Mortis Causa*, and other contracts do tend to be upheld by our courts. Cite relevant case law. [25 MARKS]

QUESTION 4

(a) In what circumstances may the Master of the High Court make the following appointments:

- i) Tutor Dative (5 marks)
- ii) Curactor Dative (5 marks)
- iii) Curator Ad Litem (5 marks)

b) Discuss the purpose of our System of Administration of Estates.

(10 marks)
[25 MARKS]

QUESTION 5

Your client Mrs. Badu, (the first wife of the late Mr. Badu) was married to her husband; Mr. Eric Badu in terms of Swazi Law and Custom. Mr. Badu was a man of Nigerian origin. Eric Badu died on the 12th of September, 2016, leaving behind a substantial estate. The estate is estimated to be in the region of E5 million in value. Mr. Badu had later married another woman, in terms of the same customary rites, and both wives had four children each.

Your client who is a resident of Siteki, Lubombo Region, wishes to report the estate of her husband to the Master of the High Court, but the younger Mrs. Badu objects to this course of action, arguing that the Master has no jurisdiction over this estate. Mr. Badu did not leave a will.

Advise your client on the foregoing circumstances, explaining to her; what the provisions of the Intestate Succession Act 1953, the Administration of Estates Act, 1902 and any other recent law stipulates as regards this situation. Would your client's situation have been better had she and her husband concluded a civil rites marriage? How will the law as we have it, cater for Mr. Badu's family members. [25 MARKS]