

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2018

TITLE OF PAPER : LAW OF SUCCESSION
COURSE CODE : L305
TIME ALLOWED : THREE HOURS
INSTRUCTIONS : 1. QUESTION 1 IS COMPULSORY
2. ANSWER ANY OTHER 3 QUESTIONS

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

QUESTION 1 – COMPULSORY

In 1990, A married B contracted a marriage in civil rights under the regime of community of property. Two kids are born in the marriage being C1 and C2. During his lifetime A advances C2 money amounting to E100 000.00 to pursue a professional career. In 2004, A deserted B, leaving her to fend for herself. He met D with whom they acquired a property wherein they built their dwelling home. D took a mortgage bond with FNB Swaziland and paid for the property, however it was registered in the name of A. A and D lived together until A met his untimely death in a car accident, in 2014. B alleges that the property in question must be collated into the estate of A.

Critically analyse the case, giving legal advice on all the issues raised therein.

[25 marks]

QUESTION 2

Lihle and Simile were married in community of property in 1980. Three children were born as a result of the marriage. Lihle was an astute civil engineer during his lifetime and retired in 2005. Lihle and Simile ran a successful kombi business and flats business. In 2017, Lihle fell ill and was diagnosed by the doctors at Mbabane Government Hospital to be suffering from prostate cancer. In November 2017 Lihle executed a will in the presence of Nokwanda, who was his mistress. Nokwanda signed the will as a witness and it was lodged at the Master's office. In the will Lihle bequeathed the trucking business and flats business to Nokwanda. Lihle succumbed to his illness in February 2018 and aged 90. Simile alleges that the will is invalid and has approached you for legal advice.

(a) Advise her fully, giving supporting evidence for your response.

[20 marks]

(b) List the requirements of a Will agreement.

[5 marks]

QUESTION 3

Discuss the duties of executors giving details regarding the grounds upon which the executor may be removed from office. Illustrate your response by making reference to decided cases.

[25 marks]

QUESTION 4

Discuss the following concepts:-

(a) *Fideicommissa*

[5 marks]

(b) *Habitatio*

[5 marks]

(c) Massing

[5 marks]

(d) Vesting

[5 marks]

(e) *Modus*

[5 marks]

QUESTION 5

Discuss the gurdian fund. Illustrate your response by making reference to decided cases.

[25 marks]

QUESTION 6

- (a) W and H executed a joint will. W and H were married in community of property and no children were born. W and H bequeathed property A to C in the event that C married someone of a Jewish Parentage. The surviving spouse was given a usufruct in respect of property A. H died tragically during a plane crash in Syria where he was stationed under the United Nation' peace keeping force. W has repudiated the right of usufruct and is claiming her half share in the estate.

Critically analyse the case giving supporting evidence of your advice.

(25 Marks)