

QUESTION 1

Mondli Zulu, the testator of 76 years of age executed a will wherein he completely disinherited his two sons, and bestowed his entire estate on Ms. Thuli Mdluli, his 30 year old girlfriend. At the material time, Mr. Zulu had been bed-ridden for 6 months after having suffered a massive stroke. He was at the time, heavily dependent on a cocktail of morphine, and antidepressants which was prescribed by his doctor in order to ease his constant pain.

Ms. Mdluli was Mr. Mdluli's sole care-giver, as she had initially been engaged as his nurse when he began to feel unwell a year before he was afflicted by the stroke.

Ms. Mdluli is not at all liked by Mr. Zulu's family. They consider her to be an immoral and shameless floozy, who is out to fleece the family of their wealth. The testator's entire estate is estimated to be in the region of 10 million emalangenani in value. The will which benefitted Ms. Mdluli was executed on the 25th of June 2016, and it sought to revoke an earlier will which had named his two sons as his joint heirs (this will had been executed on the 15th of May 1998). On the 1st of July 2016, Mr. Zulu committed suicide.

Mr. Zulu's sons wish to challenge the validity of the will, and have engaged your legal services. As their legal counsel, write a detailed legal opinion, supported by relevant case law, on the possible grounds upon which the Will may be challenged. Advise your clients on the issues that need to be alleged and proved, as well as the chances of success.

(25 marks)

QUESTION 2

- a) "When there is a will, it must be proved that the one who wrote that Will is dead. A will means nothing while the person is alive, it can only be used after the person is dead."

Discuss in light of decided cases.

(15 marks)

- b) In Swaziland inheritance is by choice, not compulsion. With examples, discuss this assertion.

(10 marks)

(25 marks)

QUESTION 3

- a) Discuss the concept of vesting in relation to a "Dies", a suspensive condition, and a modus.

(10 marks)

- b) The following bequests appear in Mathokoza's Will:

- i) "I leave my farm at Nkhamba to my wife Sihle. Her rights to the property are to be terminated in their entirety if she should remarry."

(7 ½ marks)

- ii) "I leave my house at Mpolonjeni to my son on condition that he "comes out of the closet", and leads an openly homosexual lifestyle. I further direct that he should enter a gay marriage, and should join the Jewish faith." (7 ½ marks)

How is the High Court of Swaziland likely to deal with these bequests?
(25 marks)

QUESTION 4

Discuss the following:

- a) The Nasciturus Rule (5 marks)
b) The Commorienter Problems (5 marks)
c) Sakhile made a Will bequeating a legacy of E100,000.00 to his brother Seth, and the residue of his estate in equal shares to his children Phila, Zinhle, Bethu, and his granddaughter Khulile (Bethu's daughter). Some years later Phila loses his home as part of a divorce settlement. Sakhile buys Phila a flat costing E300,000.00, so that Phila will have a roof over his head.

When Sakhile dies, the value of his estate is E170,000.00. You are the Executor of Sakhile's deceased estate. How would you effect collation in such a scenario. Draw up a Distribution Account to illustrate your response, provide detailed notes on the concept of collation generally, and explain why you have decided to distribute the estate in the manner reflected in your Distribution Account. The balance for distribution is obviously E170,000.00.

(15 marks)

(25 marks)

QUESTION 5

Siphosethu and Zama are firm friends. They have concluded an agreement, the terms of which stipulate that the first to die between them will leave the entirety of his estate to the other. Zama passes on. Siphosethu produces the agreement to the Executor of Zama's estate. Zama's wife, to whom he is married in terms of Swazi Law and Custom objects to this.

Zama's wife has approached your law firm for legal advice on how she can challenge Siphosethu's right to inherit from the estate of her husband. Advise her what the court's attitude would be in this regard, and explain under what circumstances the law would uphold Siphosethu's claim based on the document produced. (25 marks)