

QUESTION 1 - COMPULSORY

Ryan is a hardworking 15 year old high school student with excellent grades. He wants to attend medical school eventually and become a doctor. However, Ryan's family is in constant financial difficulties and will not have the funds for Ryan's post-secondary education. Estelle is Ryan's elderly aunt. Ryan visits her frequently and does her yard work and other chores around the house. On his visits, Ryan often discusses his desire to become a doctor with his aunt and also reveals that he will never achieve his dream because of his family's financial difficulties. Estelle had a previous Will which was made about 20 years ago. Recently, Estelle's health began to decline rapidly and she wanted make a new Will that was up-to-date with her intentions. The old Will provided that E200 000.00 was to be distributed in equal shares among Estelle's nieces and nephews, including Ryan.

Estelle's new Will adds a new provision that E100,000 is to be set aside in an educational trust for Ryan, and retains the same E200,000.00 gift to be divided among all her other nieces and nephews in equal shares as was in the old will. Furthermore, Estelle's old Will provided for her husband, Greg, and son, Ben. However, Estelle's new Will leaves nothing for Ben because their relationship had deteriorated since the old Will was made to the point where the Estelle and Ben had ceased communicating with each other.

Estelle wants to know whether there are any problems with her new Will. Advise her on potential challenges that can be made against her new Will. Discuss the arguments that could be made to defeat these challenges.

(25 MARKS)

QUESTION 2

T committed suicide on 10 December 2011. He left a letter in which he wrote that he revokes all previous wills and leaves all his possessions to his two children from his first marriage, S and D. This is only signed with T's signature. It appears that T executed a valid will in 2003 in which he left all his possessions to his second wife and nothing to his children. S and D approach you for advice. They want to know what their position with regard to any inheritance is. Explain fully any possible action available to them.

(25 MARKS)

QUESTION 3

Your client Maggie, has been appointed executor testamentary to the estate of her mother, Ms. Ellen Smith. Ms. Smith was a resident of the city of Santiago, Chile, and left a substantial estate in this area as well as in Eswatini. Your client has furnished you with her letters of Administration (issued to her by the Master of the High Court in Chile). She informs you that she wishes to commence the administration of the portion of her mother's estate that is situated in Eswatini.

Advise your client on the legal requirements as stated in the Administration of Estate Act, 1902.

(25 MARKS)

QUESTION 4

Some people are disqualified from appointment as executors, whilst others may validly be appointed to hold office. Discuss fully, and shed light on the grounds that warrant the removal of an executor from office.

(25 MARKS)

QUESTION 5

You are the executor of an estate in which Joe and Jane Smith had executed a joint will. Joe and Jane were married in Community of Property and Joe died on the 15th December 2018. Jane approaches you for advice as she is confused about certain content in the will. She is particularly concerned about the following clauses in the will. Read the clauses of the will and then answer the questions which follow.

1. Massing

We direct that on the date of death of the first dying of us that the estates of the first dying of us and of the survivor shall be massed and be administered as one estate. It is our wish that this will operate as both the will of the first dying of us and as the will of the survivor.

2. Bequest 1

if testator is the first to die or if the testatrix is the first dying of us, we bequeath the entire massed estate to the survivor of us.

3 Bequest 2

if we die together, we bequeath the massed estate as follows:-

- 3.1 We bequeath the shareholding in Smith Electronics CC to David Smith.
- 3.2 We bequeath our beach house in Margate to Susan Smith.
- 3.3 We bequeath our residence in Finch Terrace to Jane Smith for the duration of her life.
- 3.4 We bequeath the residue of the massed estate to our grandchildren.

Questions

1. (i) Jane is confused what is meant by a massed estate. Explain briefly to her what is meant by a massed estate.
(5 MARKS)
- (ii) Jane wants to know if she is bound by the joint will and if there are any repercussions if she repudiates the joint will? Advise her in this respect.
(10 MARKS)
- (iii) Jane is confused by clause 3.3 She is not sure what sort of right this clause creates. She wants to know whether it is a usufruct or a fiduciary right to the house. How would the courts resolve this problem?
(10 MARKS)

(25 MARKS)

QUESTION 6

The Administration of Estates Act, 1902 lays down the law pertaining to the administration of the estates of minors and absent persons. Give a full statement of what the law is in this regard.

(25 MARKS)

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