

**UNIVERSITY OF ESWATINI**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION, DECEMBER 2018**

**TITLE OF PAPER :      LAW OF SUCCESSION**

**COURSE CODE      :      LAW 307**

**TIME ALLOWED      :      THREE (3) HOURS**

**INSTRUCTIONS      :**

- 1.      ANSWER ANY FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**
- 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 1** (Compulsory)

Critically analyse Section 2(3) of the Intestate Succession Act No.3 of 1953. Evaluate its constitutionality in light of the provisions of Section 34(1) of the Kingdom of Eswatini's Constitution No. 1, 2005. In your response, explain how the court in the Supreme Court determination of Attorney General and the Master, In re: Attorney General & Titselo D. Ndzimandze & 27 Others have provided a remedy to this conundrum (if at all this is the case)? (25 marks)

### **QUESTION 2**

After completing his studies at the Limpopo Medical Institute, Dr. Dube returned home where he was appointed as a Medical Officer at the KaLanga Medical Centre, in Siteki, within the Lubombo Region. He met and fell in love with Zethu, a young nurse at the same hospital, and they were joined in matrimony at the Manzini Church of Zion. This marriage was blessed with three children, two boys and a girl.

Dr. Dube's father was the Chief of Lukhula, and upon his demise, Dr. Dube succeeded to this position. He therefore had to resign from his job at the Medical Centre, and went to live in the village so that he could take on his chiefly duties on a full time basis. The village elders soon provided him with three young maidens as "wives" which, according to them, was in keeping with the customary law of Eswatini. Zethu did not object, and was in fact quite accommodating to the new additions to the family. Indeed, all the wives felt right at home at the royal homestead, and had children by Dr. Dube.

All was well until the day that Dr. Dube died of natural causes. After the funeral a document was found tucked away in one of his desk drawers. The document bore the title; "My Last Will and Testament". It had several crossings, interlineations and amendments. At the foot of the document, there was a single signature, ostensibly that of the deceased. In terms of the document, half of the deceased's estate was to be shared by his "wives" equally, and the other half was to be shared by his children in equal portions.

Zethu is not happy with the document, and believes that it is a forgery. She would like to know the following:

- i) The legal Status of the document. (10 marks)
- ii) The entitlement of herself and her three children, if any, in the estate of the deceased. (15 marks)

### **QUESTION 3**

Sipho Msweli was married to Miliswa in terms of a civil rites marriage. The couple had two sons; Senzo (28 years old) and Sakhile (16 years of age). Mr. Msweli died in a motor vehicle accident which occurred whilst he was a passenger in a car driven by Senzo who was heavily intoxicated at the given time. The exact cause of the accident was never

established, however, it was ascertained that the vehicle veered off the main road and overturned. Mr. Msweli left a Will benefitting his wife and two sons. The Executor of the estate however is alleging that Senzo (who survived the accident) is not entitled to benefit from the will because he is responsible for his father's death.

The Will also contains a condition which stipulates that Miliswa is to remain in occupation of the marital home, and reside in it, without moving to any other area or location within the country, or else she will lose ownership of the house. The condition also stipulates that she should not re-marry under any circumstances, and if she does, the house is to be passed on to an organisation known as; "The Herbalists". The said organisation is a small group of farmers who are involved in developing a genetically modified cannabis seed which will enable the cultivation of this plant in all climate conditions.

Miliswa and her sons have approached you for legal advice. With the use of case law advise the family on the validity of the condition, as well as Senzo's capacity to benefit from the Will. (25 marks)

#### **QUESTION FOUR**

a) Discuss the following with examples.

- |                          |                 |
|--------------------------|-----------------|
| i) Soldier's Wills       | (10 marks)      |
| ii) Presumption of death | (10 marks)      |
| iii) A Dies              | (5 marks)       |
|                          | Total: 25 marks |

#### **QUESTION FIVE**

In what circumstances would a court make a finding that a Will is invalid because the Testator lacked "Testamentary Capacity"? With the use of case law, discuss five such instances. (25 marks)