



**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
BACHELOR OF LAWS  
RE-SIT EXAMINATION PAPER JANUARY 2020**

**PAPER TITLE : LAW OF SUCCESSION (LLB-IDE)**

**COURSE CODE : LAW307**

**TIME ALLOWED: 3 HOURS**

**TOTAL MARKS : 100 MARKS**

**INSTRUCTIONS:**

- 1. THE PAPER HAS FIVE (5) QUESTIONS IN ALL.**
- 2. ANSWER FOUR (4) QUESTIONS**
- 3. MARKS ARE INDICATED IN THE BRACKETS AT THE END OF EACH QUESTION**
- 4. WRITE LEGIBLY**
- 5. START EACH QUESTION IN A NEW PAGE**

**DO NOT OPEN THE PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR**

**Question 1**

A and B are married in community of property and they both died leaving behind a will bequeathing a farm and movables to their two grandchildren, Sihle and Menzi. A and B had a son Xolani who had sight of the will. He then killed both parents and was convicted by the High Court of Eswatini and sentenced to life imprisonment. Menzi died and Xolani and his wife applied that they were the sole heirs of the estate of the deceased grandchild who happened to be their own child. You have been appointed the Assistant Master of the High Court of Eswatini, critically discuss with reference to authority whether you will give effect to the application by Xolani and his wife.

[15 marks]

The testator bequeathed his estate in equal shares to his children who were *'alive at the time of his death'*. At the time of the death, his wife was pregnant with an unborn child. The Master of The High Court applied the interpretation of the will of the testator in a very strict sense saying he cannot include the unborn child in the beneficiaries of the estate. The mother of the child wants to approach the High Court regarding the above. Kindly advise her accordingly.

[10 marks]

**Question 2**

Mr Gule, a retired civil servant died on the 6<sup>th</sup> September 2019 aged 77 years old after battling with lung cancer and a mild stroke. It also transpired that he was also being diagnosed of having Alzheimer's disease and cannot make a proper recollection of things. He was admitted at Mbabane Clinic when he met his death. While at the said clinic, he made

a testamentary document or will and bequeathed his entire estate to his daughter Tsenjiwe (from his previous marriage) who spent every day of his admission at the hospital during the last two weeks. He had immovable properties in Dalriach and Eveni in Mbabane. He is survived by his wife Qondile, two sons, Langa and Lunga and his daughter Linda. Qondile approaches you for legal advice. She alleges that Mr G lacked the necessary testamentary capacity to execute a valid will. With reference to authority, advise Qondile. [25 marks]

### Question 3

- a) Define *pactum successorium* [5 marks]
- b) Discuss with reference to authority the two recognized exceptions to the general rule on succession by contract. [15 marks]
- c) Succession clauses in antenuptial contracts "**must**" comply with the Wills Act? Critically discuss the above with reference to authority. [5 marks]

### Question 4

- a) The Act provides that "...Any person who is on **active service (My emphasis)** ...may make a will without complying with the formal requirements of section 3..." Discuss with reference to authority the term 'active service'? [5 marks]
- b) Testator X provides in his will as follows; "I bequeath my Farm to my son Msimisi provided he obtains his LLB degree. When will *dies venit* and *dies cedit* take place? [5 marks]
- c) List the five (5) requirements for the application of the law of succession. [5 marks]

d) Define a legacy

[5 marks]

e) Define *collatio bonorum*

[5 marks]

### Question 5

*"The right of an individual to dispose of his or her property on death as he or she pleases was recognised in both Roman and Roman-Dutch law...This freedom is not, however, absolute".-Corbett et al The Law of Succession in South Africa, 2<sup>nd</sup> Edition, page 39-40.*

Discuss the limitations, if any, of the freedom of testation.

[25 marks]