



SCHOOL OF LAW

**NLLB303: LAW OF SUCCESSION;
END OF FIRST SEMESTER EXAMINATIONS**

NOVEMBER 2024

LECTURER :DR. E. RUTSATE

DURATION : 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

- 1. Do NOT write your name on the answer sheet**
- 2. Answer FOUR questions only (2 from Section A and the other 2 from Section B). Questions 1 and 4 are compulsory.**
- 3. Begin your answer for each question on a new page.**
- 4. The examination paper carries a total of 100 marks.**
- 5. Authorized Materials: Unannotated copies of the Constitution and prescribed Statutes**

SECTION A

ANSWER TWO QUESTIONS FROM THIS SECTION

Question 1 (COMPULSORY)

With reference to case law, common and statutory law;

- a) Briefly discuss the grounds upon which one may lack the capacity to make a will. [5 marks]
 - b) List and briefly define the types of wills available under the law of testate succession. [5 marks]
 - c) Briefly explain the different ways in which an Executor/Executrix Dative and Executor/Executrix Testamentary may be removed from office. [5 marks]
 - d) Briefly outline the formalities to be fulfilled before a will is declared valid at law. [10 marks]
- [25 Marks]

Question 2

- a) Briefly define the following terms in the Law of Succession;
 - (i) Administration of an estate [3 marks]
 - (ii) Fiduciary [3 marks]
 - (iii) *Curator bonis* [3 marks]
 - (iv) *Curator ad litem* [3 marks]
 - (v) *Curator personae* [3 marks]
 - b) With reference to case law and statutory law, briefly outline the role or duties of a magistrate in the administration of an estate of a man married in terms of customary law who has died intestate. [10 marks]
- [25 marks]

Question 3

Explain the following concepts and/or terms as they are understood in both testate and intestate succession:

- a) Beneficiary [4 marks]
 - b) *Fidei commisum* [4 marks]
 - c) Testamentary Trust [4 marks]
 - d) Residuary legatee [4 marks]
 - e) Joint and Mutual Wills [4 marks]
 - f) Collation [5 marks]
- [25 marks]

SECTION B

ANSWER TWO QUESTIONS FROM THIS SECTION

Question 4 (COMPULSORY)

- a) Briefly outline the procedure for reporting a missing person from the beginning up to the time they are declared missing or dead. [10 marks]
- b) Mr and Mrs Maseko were aged 76 years and 68 years respectively when they were involved in a car accident and both died. In their lifetime they had 5 children Temba, Musa, Simpiwe, Ntando and Saliwe. Of the 5 children only three namely Musa, Simpiwe and Ntando are surviving. Temba and Saliwe predeceased their parents in adulthood. Temba is survived by 3 children Kate, Luke and Dianne while Saliwe had a daughter Susan who also died leaving behind a son called Brad. At the time of their death, Mr and Mrs Maseko had just sold their sole property in Chisipite, Harare. Consequently, they had \$300 000 in their bank account from proceeds of the sale. They had recently moved to their rural home in Murehwa.

You are a lawyer at Nissi and Associates Legal Practitioners. The Senior Partner has asked you to advise the Maseko family as represented by the 3 surviving children on how the \$300 000 is to be shared to all descendants of Mr and Mrs Maseko using the “*per stirpes*” principle. You should also briefly explain to them what the “*per stirpes*” principle is all about.

[15 marks]

[25 marks]

Question 5

Fred Chiriga, a successful gold buyer who died on 12 May 2021 had been married to his wife Ellen for 17 years in accordance with civil marriage rites. The couple had been blessed with twin boys Jeff and Jared now aged 16 years. Prior to his marriage to Ellen, Fred had been customarily married to Eve under a registered customary marriage from 1998 to 2001. During that time, Fred had solely built a beautiful house in the upmarket Borrowdale Brooke suburb in Harare. A week before moving into the Borrowdale Brooke home, Fred had caught Eve *in flagrant delicto*, committing adultery in their bedroom at their matrimonial rural home in Domboshawa. Fred had immediately asked the then pregnant Eve to leave the matrimonial home and he categorically told her that he never wanted to see her again and her unborn child as he doubted its paternity. When he married Ellen, Fred did not tell her about the previous customary marriage to Eve, which he had never officially terminated. Eve went back to her parents’ home, also in Domboshawa. She had later given birth to twin sons Jim and Jayden now aged 19 years, both University students, for whom Fred had been secretly paying maintenance since the time they were five years old, after a DNA test had proven his paternity over them. Eve had never remarried.

Soon after Fred’s death, a will had been discovered in his study desk at the Borrowdale home. Fred had signed the will, which act had been witnessed by his twin sons Jim and Jayden born of Eve,

who had appended their signatures. The will is not dated. While Fred had placed most of the property in his estate in a Trust to be established after his death for the benefit of the whole family including his parents and siblings, he had particularly written the following in respect of the house in Borrowdale;

“I hereby bequeath the Borrowdale house to my beautiful wife E and our twin sons the JJs to enjoy sole ownership in equal and undivided parts thereof until their death or E’s remarriage whichever might come first, whereupon the house will remain in our twin sons’ joint ownership. I hereby appoint S. Ncube, the Senior Partner of Ncube and Partners to be the Executor of my estate after my death....”

Ellen and her sons Jeff and Jared are of the view that the reference to *“my beautiful wife E and our twin sons the JJs...”* is in direct reference to them. On the other hand, Eve also feels that since she was never officially divorced from Fred, that statement refers to her and her twin sons, Jim and Jayden, particularly because Fred chose the latter to witness the signing of his will.

You are the Executor Testamentary appointed in Fred Chiriga’s will and the Master of the High Court in Harare has asked you to give a legal opinion on the matter, particularly in respect of the following;

- a) The implications of Fred having had two subsisting marriages at the time of his death.
- b) The legal implications arising from his twin sons Jim and Jayden having acted as witnesses to Fred’s attestation of his will.
- c) Whether, in light of the recent developments in the Zimbabwean law of testate succession, the intention of the testator rather than the formalities should be the hallmark of determining the validity of Fred’s will. The Master would want to hear both arguments for and against upholding the intention of the testator and/or strict compliance with the formalities, before making a decision on whether to invalidate the will and proceeding by way of intestate succession.

Making reference to relevant statutory provisions and case law, write a legal opinion on the above matter as duly requested by the Master of the High Court. [25 marks]

Question 6

Ntombi is a 56-year-old successful executive who is married to her handsome younger man Lebo aged 40. At the time of their marriage, Ntombi had acquired substantial properties all registered in her name. She has a daughter Nandi, who is 30 years old from her previous marriage but Nandi and Ntombi are estranged. In October 2020, Ntombi travelled to London and contracted Covid-19 and died. She left a Will and below are the contents of the Will:

To Lebo

Lebo, well I stopped loving you a long time ago. Your affairs with numerous women have driven me to stop loving you. I want you out of my Borrowdale home. By the way, Lebo, as you know I was the sole breadwinner over our 10-year-old relationship and everything belongs to me.

To Nandi

I have never forgiven you for taking your father's side after our divorce. I am sure you will receive an inheritance from him when he dies but not from me.

This is how I want my estate to be distributed;

- i. Borrowdale home must be awarded to my parents*
- ii. Mt Pleasant house must be awarded to my beloved niece Mandisa*
- iii. 5 Glenview houses to each of my 5 siblings.*
- iv. Savings and pensions to my parents*

Yours

Ntombi

Lebo and Nandi are shocked by the will and approach your law firm to see if they can contest the Will.

You are required to advise Lebo and Nandi.

[25 Marks]

END OF EXAMINATION