



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: Law of Succession (ERF0011/ LSU41A0)
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: November 2021 (Main Examination)

<u>DATE</u>	: 17 November 2021	<u>SESSION</u>	: 08:30
<u>ASSESSOR(S)</u>	: MS L VAN DER MERWE		
<u>MODERATOR</u>	: PROF M WATNEY		
<u>DURATION</u>	: 3 HOURS	<u>MARKS</u>	: 50

NUMBER OF PAGES: 3 PAGES

INSTRUCTIONS:

1. Remember that all university regulations in respect of assessments apply.
 2. Write legibly.
 3. Number the questions clearly.
 4. Use full case names when answering questions.
 5. Follow the instructions provided **carefully**.
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SECTION A

QUESTION 1

Use the following set of facts to answer questions 1.1.1 to 1.1.6.

Reagan is employed as an engineer at Dalco Engineering. Reagan has a wife, Lena. Lena and Reagan have two children – Caeli and Coco. Reagan is a majority shareholder at Dalco Engineering. He holds a 22% shareholding in the business. In his free time, Reagan is passionate about farming and owns various hectares of land where orange farming takes place. Reagan approaches you to draft joint last will and testament in your capacity as his attorney.

- 1.1 Taking the aforementioned facts into consideration, draft the following types of bequests for your client's will. Your answers may include additional facts or information, such as physical addresses or vehicle details and the like, that you have created. Do not draft an actual last will and testament.
- 1.1.1 Draft a *fideicommissum* bequest in respect Dalco Engineering. (2)
- 1.1.2 Draft a *habitatio* bequest in respect of Reagan's farm. (2)
- 1.1.3 Draft a direct substitution bequest relating to Reagan's house. Your answer must make reference to one *institutus* and several *substitutii*. (2)
- 1.1.4 Draft a clause that creates a distinction between heirs and legatees. (4)
- 1.1.5 Draft a suspensive condition in respect of Reagan and his wife, Lena. (2)
- 1.1.6 Draft a bequest that is regarded as unlawful. (2)

SUB TOTAL:

[14]

QUESTION 2

Use the following set of facts to answer questions 2.1 and 2.2.

Mike contracts Swine Flu and dies intestate on 16 November 2021. At the time of his death, Mike was in a polygamous marriage with Mpho (first wife), Tiny (second wife) and Lindo (third wife) in terms of customary law. Mike has 7 children from his 3 wives. After Mike's death, it transpires that he was engaged in an extra-marital, same sex affair with John. Mike and John did not have reciprocal duties of support. John indicates that it was Mike's dying wish to support John financially prior to his death. Tiny discovers that she is pregnant 3 months after Mike's death with Mike's child. She decides that she wants to name the child Mike. Mike's estate amounts to R1 900 000. Mpho approaches you for legal advice.

2.1 Taking the aforementioned facts into consideration, calculate how Mike's intestate estate will be distributed. (12)

2.2 Discuss whether, in your view, unmarried heterosexual couples should receive the same protection offered to those in a same sex life partnership as set out in the matter of *Gory v Kolver NO and Others* (CCT28/06) [2006] ZACC 20. (5)

SUB TOTAL: [17]

QUESTION 3

Use the following set of facts to answer questions 3.1 to 3.6.

Desmond and Sellina are married in community of property and have been married since 1994. They have one child, Samson. Additionally, the couple legally adopted a daughter, Milly earlier this year. Sellina dies in a motor vehicle collision. Shortly after her funeral, Desmond finds a video recording of Sellina's last will and testament. Desmond approaches you for advice. Sellina is survived by her mother and father as well as by her twin sister Viola. Desmond approaches you for advice.

3.1 Taking the aforementioned facts into consideration as well as your knowledge of the law of succession, advise Desmond whether Sellina's will is valid or not. Substantiate your answer. (3)

3.2 Assume that Desmond wants to approach the court to declare Sellina's will valid. Advise Desmond of the requirements that must be met for the court to allow Sellina's Will. (3)

3.3 Assume that it is discovered that Desmond forged Sellina's will. Would Desmond still be in a position to inherit? Motivate your answer briefly. (3)

3.4 Assume that Desmond alleges that Sellina revoked all previous wills. Advise Desmond of the requirements that the court will consider when determining whether a will has been revoked. (2)

3.5 Assume that Viola states that Sellina has a prior written will that she burnt. Identify the type of revocation that Sellina utilised in her will as well as the requirements that need to be met for revocation. (3)

3.6 Assume that Viola alleges that Sellina was too old to conclude a valid will. With reference to case law, discuss the approach of the court in relation the effect of age on testamentary capacity. (5)

SUB TOTAL: [19]
GRAND TOTAL: [50]
