



<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 (Supplementary Examination)
<u>EXAM</u>	: January 2021

<u>DATE</u>	: 18 January 2021	<u>SESSION</u>	: 08:00
<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: 4 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**.
-

SECTION A

QUESTION 1

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

Ronald is employed as an engineer at Duron Engineering. Ronald has a wife, Lucy. Lucy and Ronald have two children – Caeli and Coco. Ronald is a majority shareholder at Duron Engineering. He holds a 35% shareholding in the business. In his free time, Ronald is passionate about farming and owns various hectares of land where Macadamia Nut farming takes place. Ronald 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.

1.1.1 Draft a *fideicommissum* bequest in respect of Ronald's farm. (2)

1.1.2 Draft a *usufruct* bequest in respect of Ronald's farm. (2)

1.1.3 Draft a direct substitution bequest relating to Ronald'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 modus in respect of Ronald and his wife, Lucy. (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.

Peter contracts COVID-19 and dies intestate on 3 November 2020. At the time of his death, Peter was in a polygamous marriage with Maureen (first wife), Tiny (second wife) and Lindo (third wife) in terms of customary law. Peter has 7 children from his 3 wives. After Peter's death, it transpires that he was engaged in an extra-marital, same sex affair with John. Peter and John did not have reciprocal duties of support. John indicates that it was Peter's dying wish to support John financially prior to his death. Tiny discovers that she is pregnant 3 months after Peter's death with Peter's child. She decides that she wants to name the child Peter. Peter's estate amounts to R2 100 000. Maureen approaches you for legal advice.

- 2.1 Taking the aforementioned facts into consideration, calculate how Peter's intestate estate will be distributed. (12)
- 2.2 Assume that Peter and Tiny's unborn child is not born alive. Would your answer in 2.1 change? Substantiate your answer. (2)

SUB TOTAL: [14]

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 her sleep. 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)
- 3.7 Provide your view as to whether you think certain formalities for valid will need to be amended or not. Substantiate your answer. (3)

SUB TOTAL: [22]
GRAND TOTAL: [50]
