



<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 2020

<u>DATE</u>	: 18 November 2020	<u>SESSION</u>	: 08:30-11:30
<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: 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**.
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SECTION A

QUESTION 1

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

Jabu is the sole shareholder and director of ABC Business Consulting (Pty) Ltd, that performs business management services for various companies. Jabu has a wife, Murtle. Jabu and Murtle have five children - Skhu, Imo-Rhesa, Naz, Sabreen, Busi. Jabu owns two expensive sports cars and five homes across South Africa. Jabu approaches you to draft his 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 Jabu's company. (2)

1.1.2 Draft *usufruct* bequest in respect of Jabu's company. (2)

1.1.3 Draft a direct substitution bequest relating to one of Jabu's sports cars. Your answer must make reference to several *institutii* and one *substitutus*. (2)

1.1.4 Draft a clause that creates a trust that identifies each of Jabu's children as income beneficiaries. The said trust must comprise of two trustees. (4)

1.1.5 Draft a resolute condition respect of Jabu and his daughter, Skhu. (2)

1.1.6 Draft a bequest that identifies Imo-Rhesa as a pre-legacy. (2)

SUB TOTAL: [14]

QUESTION 2

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

Rudo contracts COVID-19 and dies intestate on 14 April 2020. At the time of his death, Rudo was in a polygamous marriage with Khanya (first wife) and Lauren (second wife) in terms of customary law. Rudo was unhappy with both his wives and decided to move in with his girlfriend, Samantha, without terminating his customary marriages. Rudo has two children, Tertia and Eesa, with Lauren and one child, Lihle, with Khanya. Samantha and Rudo lived together and shared reciprocal duties of support during their relationship. Khanya has a child, Siphosiso, from a relationship prior to Rudo. Samantha and Rudo were in the process of having a baby via surrogacy. Their surrogate, Nancy, was four months pregnant at the time of Rudo's death. The surrogate delivers a boy, named Luka, during September 2020. Due to South Africa's national lockdown, Rudo and Samantha were unable to enter into a commissioning or surrogacy agreement for Luka. Rudo's estate amounts to R1 200 000. Samantha approaches you for legal advice.

- 2.1 Taking the aforementioned facts into consideration, calculate how Rudo's intestate estate will be distributed. (12)
- 2.2 Assume that Rudo and Khanya informally adopted Khanya's niece, Mary, in 2012. While the adoption took place in the absence of any orders of court, Rudo and Khanya treated Mary like their biological daughter. Would your answer in 2.1 change as a result of Mary's informal adoption? Substantiate your answer. (2)

SUB TOTAL: [14]

QUESTION 3

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

Hester (16), Boipelo (13), Charlie (16) and Dima (13) go on a camping trip along the banks of the Orange River. Hester is attacked by a crocodile in the early hours of the morning. During her final moments, Hester decides to draft her last will and testament on top of a few pages from a magazine. Hester dies as a result of her injuries. Hester's last will and testament has three pages of her writing only. Hester signs all the pages of the will, with the exception of the second page. The witnesses, Boipelo and Charlie, sign all three pages of the will.

On the last page of the will, Boipelo and Charlie leave a space amounting to approximately eight centimetres between Hester's last written words and their signatures. Hester signs the will with the pen in her mouth and by making a mark. Hester decides to physically cross out a clause in her will that she wishes to cancel. Boipelo tells Hester that she loves her and therefore deserves most of her assets. Hester bequeaths her book collection to Boipelo. Charlie advises Hester that he will not be her friend if he doesn't receive all of Hester's money in the will. Hester bequeaths all her money amounting to R200 to Charlie. Hester's mother, Miemie, approaches you for legal advice relating to the deceased estate.

- 3.1 Taking the aforementioned facts into consideration as well as your knowledge of the law of succession, advise Miemie whether Hester's will is valid or not. Substantiate your answer. (6)
- 3.2 Notwithstanding your answer in 3.1, Miemie suspects that Hester's bequest to Charlie might be invalid. Advise Miemie of the factor that may be relied upon to invalidate the bequest in respect of Charlie. Your answer must refer to case law as well as the factors that the court will consider when deciding upon the validity of the said bequest. (5)
- 3.3 Explain whether Hester's bequest to Boipelo is valid or not, given what Boipelo said to the deceased prior to her death. (2)
- 3.4 Assume that Hester made a video recording of her last will and testament instead. Discuss the validity of the said recording. (2)
- 3.5 Identify the type of revocation that Hester utilised in her will as well as the requirements that need to be met for revocation. (3)

3.6 With reference to case law, discuss the approach of the court in relation to the positioning of the witness signatures on the last page of the will. (4)

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