



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Private Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: Law of Succession (ERF0011/ LSU4150)
<b><u>SEMESTER</u></b>	: Second
<b><u>EXAM</u></b>	: <b>Supplementary Examination January 2020</b>

<b><u>DATE</u></b>	: January 2020	<b><u>SESSION</u></b>	: TBC
<b><u>ASSESSOR(S)</u></b>	: MS L VAN DER MERWE		
<b><u>MODERATOR</u></b>	: PROF M WATNEY		
<b><u>DURATION</u></b>	: 2 HOURS	<b><u>MARKS</u></b>	: 80

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**NUMBER OF PAGES: 4 PAGES**

**INSTRUCTIONS:**

1. Answer all questions in the answer sheet provided.
  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

Define the following terms:

- 1.1 *Fideicommissum* (2)
- 1.2 Trust (2)
- 1.3 *Stirpes* (2)
- 1.4 Suspensive condition (2)
- 1.5 Mutual will (2)

### QUESTION 2

- 2.1 Discuss the impact of section 9 of the Constitution of the Republic of South Africa, 1996 on a testator's freedom of testation. (4)
- 2.2 Explain the doctrine of election. (2)
- 2.3 Explain how an intestate estate will be distributed in the event that the deceased has no living relatives. (4)
- 2.4 Explain the various ways in which direct substitution can take place in a will. (4)

### QUESTION 3

Use the following set of facts to answer questions 3.1 to 3.4.

Tom was 105 years old when he died. Tom was relatively healthy, despite his age. Tom enjoyed drinking large amounts of red wine during the day. In September 2019, Tom drafted his last will and testament as set out below. He died in October 2019.

"I bequeath my assets as follows:

- 1. The University of Neverland inherits R450 000.
- 2. My daughter Riley receives R200.
- 3. My caretaker Zodwa inherits the residue of my estate"

Tom signed the document in the presence of two witnesses. Riley approaches you for legal advice.

- 3.1 With reference to the relevant case law and legal principle(s) advise Riley of the test that the court will apply to determine Tom's testamentary capacity. (4)
- 3.2 Advise Riley of the court's general view of the impact of consuming alcohol as well as old age on testamentary capacity. (4)
- 3.3 Assume that Riley has a suspicion that Tom signed his will because he thought

that he was signing another document. Advise Riley of the impact of this type of mistake on the validity of the contract. (2)

3.4 Identify the instances in which a will is regarded as invalid in its entirety. (4)

**QUESTION 4**

Discuss the court's interpretation of the term "spouse", with reference to the decision in *Volks NO v Robinson and Others 2005 5 BCLR 446 (CC)*. (10)

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**SUB TOTAL: SECTION A** **[48]**

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## SECTION B

### QUESTION 5

Use the following set of facts to answer questions 5.1 to 5.6.

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.

- 5.1 Explain the position of adopted children in terms of the law of succession? (3)
- 5.2 Advise Desmond of the formalities for a valid will as stipulated in the Wills Act 7 of 1953. (7)
- 5.3 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 condone a formally defective will. (3)
- 5.4 Assume for this question that the court does not condone Sellina's will. If the value of Sellina's estate is R1 800 000, determine how her estate would devolve in terms of the Intestate Succession Act 81 of 1987. Refer to the original set of facts to determine her beneficiaries. Show all your calculations. (10)
- 5.5 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)
- 5.6 Assume that Desmond alleges that Sellina revoked all previous wills.
- 5.6.1 Advise Desmond of the requirements that the court will consider when determining whether a will has been revoked. (2)
- 5.6.2 Differentiate between tacit and express revocation of a will. (4)

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**SUB TOTAL: SECTION B**

**[32]**

**GRAND TOTAL:**

**[80]**

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