UNIVERSITY OF JOHANNESBURG

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| **FACULTY** | : Law |
| **DEPARTMENT** | : Private Law |
| **CAMPUS** | : APK |
| **MODULE** | : Law of Succession (ERF0011/ LSU4150) |
| **SEMESTER** | : Second |
| **EXAM** | : **November 2019** |

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| **DATE** | : 16 November 2019 | **SESSION** | : 12:30-14:30 |
| **ASSESSOR(S)** | : MS L VAN DER MERWE | | |
| **MODERATOR** | : PROF M WATNEY | | |
| **DURATION** | : 2 HOURS | **MARKS** | : 80 |

**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**

## SECTION A

### QUESTION 1

Define the following terms:

1.1 Adiation (2)
1.2 Direct substitution (2)
1.3 Fiduciary duty (2)
1.4 *Dies cedit* (2)
1.5 Joint will (2)

### QUESTION 2

2.1 Draft two (2) separate bequests wherein a testator bequeaths a legacy and an inheritance, respectively. Taking into consideration the bequests drafted, provide one (1) reason why a distinction is made between legatees and heirs in South African law of succession. (3)

2.2 Identify the instances in which intestate succession will be possible. (4)

2.3 Distinguish between express and tacit revocation of a will and provide an example of each of the aforementioned types of revocation. (4)

### QUESTION 3

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

Thando is 82 years old and dies on 20 September 2019 after a long illness. Thando drafted her latest will in March 2019. Thando took numerous forms of medication from January 2019 to manage her pain levels. She is survived by two children, Dean and Tertia. Thando also leaves behind her sister, Lucy. While she was alive, Thando gave her son Dean a loan to the value of R150 000. Dean failed to repay Thando as per their loan agreement. Thando gifted Dean R500 000 for his birthday in 2014. Thando also loaned her sister, Lucy, R8000 in 2017. Lucy failed to repay Thando as per their loan agreement. Thando's will contained a bequest that leaves her house, located in Norwood, to Lucy. Thando's will contains a further bequest stating that the remainder of her estate, amounting to R2 000 000, is to be divided equally between Dean and Tertia. Dean and Tertia are both still alive. Tertia claims that her brother, Dean, received numerous benefits while her mother was alive and that she was disadvantaged. Tertia approaches your law firm for legal advice.

3.1 Advise Tertia of the purpose of collation as well as benefits that are not subject to collation. (5)

3.2 Taking into consideration your answer in 3.1, advise Tertia of how collation will take place in respect of Thando's estate. Show all calculations. (10)

3.3 Assume that Tertia suspects that Thando was heavily medicated for most of 2019 and that it was not possible for Thando to understand what she was signing. With reference to the judgment of *Spies v Smith 1957 1 SA 539 (A)*, advise Tertia of the aspects that

will be considered by the court when determining if Thando lacked the required testamentary capacity to draft a will. (3)

3.4 Assume that Tertia suspects that Thando's will is invalid. Identify the instances in which a will is regarded as invalid in its entirety. (4)

**QUESTION 4**

Wills serve both a social and economic function in society. For this reason, it remains important for the testator to ensure that the provisions of his/her will are practically possible and that there are no gaps relating to how provisions in a will shall be applied. With reference to the decision in *Harris v Assumed Administrator Estate Late Leslie MacGregor 1987 2 All SA 321 (A),* discuss the vesting of rights in the event of a will becoming inoperative. (10)

**SUB TOTAL: SECTION A [53]**

## SECTION B

**QUESTION 5**

**Use the following set of facts to answer questions 5.1 to 5.4.**

John and Reagan have been married, out of community of property, for eight years. John and Reagan legally adopted four children, Nicolene, Juan, Aaliyah and Peyton. John and Reagan entered into a valid surrogacy agreement with Samantha. Samantha is currently carrying John and Reagan's unborn child. Reagan has two daughters, Lilo and Winnie, from a previous marriage to Sophie.

Reagan dies in a car accident before the birth of his child who is being carried by the surrogate, Samantha. After Reagan's funeral, John goes through Reagan's phone and discovers a voice note containing Reagan's last will. In the said voice note, Reagan bequeaths his entire estate to John. John approaches you for legal advice.

5.1 What is the legal position of John and Reagan's unborn child in the context of law of succession? (4)

5.2 Assume that John is of the view that Reagan's voice note is a valid will. By making reference to the formalities for a valid will in terms of the Wills Act 7 of 1953, advise John about the validity of Reagan's voice note. (10)

5.3 Assume for this question that the court declares that Reagan's will is invalid. If the value of Reagan's estate is R1 500 000, determine how his estate would devolve in terms of the Intestate Succession Act 81 of 1987. Refer to the original set of facts to determine his beneficiaries. Show all your calculations. (10)

5.4 Assume that it is discovered that John hid a previous, written version of Reagan's will. Advise whether John would still be able to inherit from Reagan's estate. Motivate your answer briefly. (3)

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| **SUB TOTAL: SECTION B** | **[27]** |
| **GRAND TOTAL:** | **[80]** |