



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW (AUCKLAND PARK CAMPUS)

SUBMISSION OF FINAL EXAMINATION PAPERS

November/December 2017

MODULE NAME: LAW OF SUCCESSION

MODULE CODE: LSU41AO

LECTURER (S): Mrs Whitney Rosenberg

HEAD OF DEPARTMENT: _____

EXIT MODULE: YES/ NO _____

FOR EXIT MODULES:
EXTERNAL MODERATOR: _____

EXTERNAL MODERATOR FORM ATTACHED: _____

INSTRUCTIONS:

1. How many of the following items will be required per student?

Examination script (4 pages) _____

Scanner sheet _____

Other (please specify) _____

2. How many students are still attending lectures (with a view to the number of examination papers required)? 330

SIGNATURE OF LECTURER: M Rosenberg

DATE: 06/11/2017

**SIGNATURE AS HEAD OF DEPARTMENT
(AS INTERNAL MODERATOR)** M M Whitney
1/11/2017

DATE: _____

FOR ADMINISTRATIVE PURPOSES: Vice Dean

Noted: [Signature] **Date:** 2017/12/4
W MILLARD



PROGRAM : LLB; BCOM (Law); BA (Law)

SUBJECT : LAW OF SUCCESSION

CODE : ERF0011 / LSU41A0

DATE : EXAMINATION
15 NOVEMBER 2017

DURATION : 12:30 - 14:30

WEIGHT : 50:50

TOTAL MARKS : 80

EXAMINER : MRS W. ROSENBERG

NUMBER OF PAGES : 4 PAGES

INSTRUCTIONS : QUESTION PAPERS MUST BE HANDED IN.

INSTRUCTIONS TO CANDIDATES:

1. PLEASE ANSWER ALL THE QUESTIONS.
 2. HAND IN THE QUESTION PAPERS.
 3. CALCULATORS MAY BE USED FOR QUESTIONS 4 AND 5.3
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QUESTION 1

Define the following terms:

- | | | |
|------|----------------------------|-------------|
| 1.1. | Stirps | (2) |
| 1.2. | Collaterals | (2) |
| 1.3. | <i>Pactum successorium</i> | (2) |
| 1.4. | Mutual will | (2) |
| 1.5. | <i>Delatio</i> | (2) |
| 1.6. | <i>Aliunde</i> evidence | (2) |
| | | (12) |

QUESTION 2

Mrs Jennings, the testatrix, was diagnosed with terminal cancer and with only a few months to live she was in a state of physical and mental weakness. Her partner, Mr Allwrite, looked after her in the last months of her illness and threatened her on a regular basis that “if you bequeath the house in Blouberg to your children then I will not take care of you!” As a result, the testatrix signed a will in which she revoked the previous will and left everything including the house in Blouberg to Mr Allwrite. She told her friend that she was afraid that Mr Allwrite would leave her. Mrs Jennings eventually dies after a long illness. Her three children want to know whether they may challenge this will and on what basis. Refer to case law in your answer. Provide a concise answer covering two pages maximum.

(15)

QUESTION 3

- | | | |
|------|--|-----|
| 3.1. | List the requirements for the creation of a valid trust. | (3) |
| 3.2. | Name five presumptions that are used in the interpretation of wills. | (5) |
| 3.3. | List the requirements for a valid <i>fideicommissum</i> . | (3) |
| 3.4. | Differentiate between a suspensive and resolutive conditon. | (2) |
| 3.5. | Differentiate between <i>dies cedit</i> and <i>dies venit</i> . | (2) |

(15)

QUESTION 4

Simphiwe is an elderly gentleman who dies following a long illness. He is survived by four children, Gift, Wayne, Janice and Lerato. He also leaves behind his sister, Alexandra. During Simphiwe's lifetime he donated R100 000 to his son, Wayne, to pay for his LLB degree and he lent R4 000 to his sister, Alexandra. He also gave Gift R50 000 for him to buy a share in a magazine of which he was editor-in-chief and gave his daughter Janice R20 000 as a wedding gift. In Simphiwe's will he provided that he would leave his house in Johannesburg to his sister Alexandra. The residue of his estate (amounting to R1 000 000) is to be divided equally amongst Gift, Wayne, Janice and Lerato all of whom are still alive. Lerato claims that her siblings all received benefits while her father was alive and she was disadvantaged. She approaches you to find out whether collation is possible and how Simphiwe's estate would devolve. Show all calculations.

(15)

QUESTION 5:

Cassidy and Aaron have been married for five years. They are married in community of property. Cassidy and Aaron have two children, Janis and Damian. Aaron also has two daughters, Gretchen and Karen, from a previous marriage to Regina. Cassidy is pregnant with the couple's third child.

Two months before Cassidy gives birth, Aaron dies of unknown causes. Cassidy receives the following email shortly after Aaron's funeral:

To: cassidyplastic@northshore.com

From: anonymous@yahoo.com

Dear Cassidy

Aaron sent this to me before he died. Use it, don't use it, whatever.

From Me

To: anonymous@yahoo.com

From: aaron@northshore.com

>I Aaron Samuels, Identity Number 8002027765231 of 14 Willow Avenue
>Killarney

>Hereby declare this to be my last will and testament

>I nominate Regina George as the executor of my estate.

>I direct that my estate should devolve as follows:

- A) To my wife Cassidy I leave my house in Killarney and all of my sports memorabilia.
- B) To my ex-wife Regina I leave the contents of my cheque account with Nedbank (account number 108234445) on the condition that she dyes her hair blonde and continues to do so for the rest of her life.
- C) To my son Damian I leave my jetski, on the condition that he allows his sisters to use it when they go on holiday to Hartebeespoort.
- D) The residue of my estate is to be divided equally between my children.

> Aaron

Answer the following questions based on the facts above:

- 5.1 What is the legal position of Cassidy and Aaron's unborn child? (4)
- 5.2 Briefly discuss the court's power to condone a formally defective will. Refer to the relevant section in the Wills Act 7 of 1953 and to the relevant case law in your answer. (6)
- 5.3 Assume for this question that the court does not condone Aaron's email. If the value of the joint estate of Aaron and Cassidy is R2 700 000, 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 found that Aaron was poisoned by Cassidy. Would she still be able to inherit from his estate? Motivate your answer briefly. (3)
- (23)

TOTAL [80]