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**UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF LAWS
FINAL EXAMINATION PAPER NOVEMBER 2019**

PAPER TITLE : LAW OF SUCCESSION (LLB-IDE)

COURSE CODE : IDE LAW307

TIME ALLOWED: 3 HOURS

TOTAL MARKS : 100 MARKS

INSTRUCTIONS:

1. THE PAPER HAS FIVE (5) QUESTIONS IN ALL.
2. ANSWER FOUR (4) QUESTIONS
3. QUESTION 1 IS COMPULSORY
4. MARKS ARE INDICATED IN THE BRACKETS AT THE END OF EACH QUESTION
5. WRITE LEGIBLY
6. START EACH QUESTION ON A NEW PAGE

DO NOT OPEN THE PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

Question 1

With the aid of decided cases, critically discuss the state of the law of intestate succession in the Kingdom of Eswatini. [25 marks]

Question 2

Vusani Shabangu is an old farmer residing at his farm at Hawane who died peacefully at a hospital in Malaysia after his annual routinely check-ups. He is survived by his wife and ten children (6 boys and 4 girls). He executed a testament/will. His estate is made of movable assets including cars, jewellery and farming equipment. He duly bequeathed all the movable assets to the children and the farm to his wife, giving the child the right of usufruct of the farm during the life of the wife. If she predeceases the husband, the farm shall vest on a trust created by the will and shall be subdivided to all living children before the testator. The children who predeceased the testator shall also benefit by representation per stirpes. The old man signed by means of a mark. He arranged for witnesses including fifteen years old (Zwelethu) and nineteen years old (Sizwe) who also signed the will as witnesses. It further transpired that one of the witnesses above did not append his usual signature but made initials instead of signing. The will in page 4 had a ten-centimetre gap between the last content of the will and the signature of the will. The testator further wants the witness Sizwe to be the executor of the estate.

Consider the factual background above and answer the following questions;

- a) Were the two witnesses Zwelethu and Sizwe old enough to be witnesses of the will? Explain your answer.

[2 marks]

- b) Does the will of Vusani Shabangu comply with all the testamentary requirements for a valid will? Explain your answer.

[7 marks]

- c) Suppose the will is invalid or suppose something is missing. What advise can you give to the executor/beneficiaries that would enable the relevant beneficiaries to benefit thereunder? Can the missing document, if any, be availed even after the death of the testator or execution of the will or *post mortem testatoris*?

[10 marks]

d) Critically discuss the validity of the will in the wake of the 10-centimetre gap above.

[4 marks]

e) Discuss the suitability of Sizwe being executor of the estate of Vusani Shabangu.

[2 marks]

Question 3

A. Using your own particulars, draft a will and it must include the following;

- | | |
|---|-----------|
| i. Revocation clause | [3 marks] |
| ii. Appointment of executor clause | [3 marks] |
| iii. An absolute bequest | [4 marks] |
| iv. A legacy | [3 marks] |
| v. A bequest subject to a <i>modus</i> or obligation, | [3 marks] |
| vi. A suspensive condition, and | [3 marks] |
| vii. A resolutive condition | [3 marks] |
| viii. An attestation clause | [3 marks] |

Question 4

Msongelwa Mcanjelwa Sibhaha left the country under mysterious circumstances in 2004. He was 45 years when he left the country. He left behind a valuable estate including a Farm at Droksford, jewellery, vintage cars and livestock. He was a marine engineer and a holder of BSc in Marine Engineering obtained at the University of Southampton in the United Kingdom. He was hired by a company in Cape Town servicing submarines and war ships. He spent most of his time sailing in the seas. The eldest son of Msongelwa has already approached the offices of the Master of the High Court boastfully seeking the Master to distribute the estate of their 'disappeared' father and pay out all benefits due to them in the estate. The Master of the High Court is so sceptical of doing so in the absence of proof of death. The children of the said Msongelwa Mcanjelwa Sibhaha now want to approach the High Court of Eswatini for an order

presuming their father dead so they can be able to dispose of the estate property amongst themselves according the relevant law. They are so confident of the grant of the said order because the old man has been away from home for a period of more than 15 years and such constitutes sufficient proof. Advise them on the prospects of success of their application to the High Court. [25 marks]

Question 5

Define the following terms;

- a) Joint will [3 marks]
- b) Massing [3 marks]
- c) Legacy [3 marks]
- d) *Collatio bonorum* [3 marks]
- e) *Per stirpes* [3 marks]
- f) Child's share [3 marks]
- g) What is the difference between an heir and legatee, if any? [3 marks]
- h) *Animus testandi* [2 marks]
- i) Mutual will [2 marks]