



ZIMBABWE EZEKIEL GUTI UNIVERSITY
LAW OF SUCCESSION AND ADMINISTRATION OF ESTATES
LLB307
TIME THREE (3) HOURS

Candidates should answer **FOUR (4)** questions, at least **one question** must be answered from **Section A** and at least **one question** must be answered from **Section B**.

Candidates are permitted to take into the examination room **un-annotated** copies of the Zimbabwean Statutes.

05 OCT 2022

SECTION A
ANSWER AT LEAST ONE QUESTION FROM THIS SECTION

Question 1

- (a) S5 of the Missing Persons Act, Chapter 5:14, provides for a magistrate to make an order presuming a person's death. However, the Act is silent on the criteria to be used in making such a determination. Discuss, citing examples, the extent to which the previous common law requirements could be used to assist a court in making such a determination.
(10 marks)
- (b) Upon lodging an application for an order with the clerk of court in respect of a missing person, the magistrate may either grant an order presuming that person dead or an order declaring him/her missing, (s5 of the Missing Persons Act, Chapter 5:14). Explain the difference, if any, between the content or implication of these orders and opine on whether it is prudent to have both options in respect of missing persons in the Missing Persons Act Chapter 5:14.
(15 marks)

Question 2

Discuss the legal status of a deceased estate before and after the appointment of an executor.

Highlight the significance, if any, of establishing this question of law.

(25 marks)

Question 3

S8 and s9 of the Wills Act, Chapter 6:06, lay down rigorous requirements for the execution of wills and the execution of any amendments to a will. S8(5) of the Wills Act Chapter 6:06 creates a broad discretion on the part of the Master of the High Court to accept wills that fail to comply with the formalities which are rigorously laid down in the other sub-sections of s8 of the Wills Act and s9 of the same act.

S15 and S15A of the Wills Act governing the revocation of a will or any part thereof are remarkably liberal in regard to the requirements for a valid revocation of a will or part thereof, or a codicil.

(a) Discuss, using examples, whether it is possible to reconcile these two seemingly contradictory approaches, rigour and flexibility, in dealing with wills.

(15 Marks)

(b) With the aid of examples discuss whether in the light of the s8(5), which was an amendment to the Wills Act, there is any purpose in retaining s10 and s11 of the Wills Act.

(10 Marks)

(25 Marks)

Question 4

Discuss, using examples, the potential significance of S68 D of the Administration of Estates Act Chapter 6:01 in making situation and family specific inheritance plans that deal with the often very complex family situations that need to be addressed in the distribution of the intestate estates of person's to whom customary law is applicable

(25 Marks)

SECTION B

ANSWER AT LEAST ONE QUESTION FROM THIS SECTION

Question 5

S5 of the Wills Act Chapter 6:06 creates an impression that a testator has quite a wide discretion in determining how his or her property will be distributed after death but the reality is that there are significant limitations that can be imposed, after death, on so called freedom of testation.

Discuss, using examples, ways in which a testator's freedom to dispose of property can be limited in the final distribution process of his or her estate.

(25 marks)

Question 6

Josiah died intestate one year ago, he is survived by three wives. His first wife, Zuza, he married in terms of the customary law in his home area and their marriage was not registered in terms of the law, his second wife, Maria who is Zuza's cousin, he married in terms of the Customary Marriages Act (Chapter 5:07) and his third wife, Dorcas, whom he married in terms of the Marriage Act (Chapter 5:11). Of his three wives only Dorcas has borne him any children, they are Pretty who is eight (8) years old, Benjamin who is five (5) years old and Rutendo who is three 3 years old.

After Josiah's death a son, Ndanyuka (14) (by another woman, Jezebel) for whom Josiah had been paying maintenance for the 12 years prior to his death was 'revealed' to the family.

At his death Josiah left the following property:

a small scale commercial farm in the Zakana area on which his two first wives live and farm currently as they did during Josiah's lifetime. The two wives share the family 'compound' although each has her own brick under thatch residence;

a bottle store in Zakana Business center which Dorcas, who was initially an employee, took over running when she married Josiah. There is a brick under tile cottage attached to the bottle store – which Dorcas has occupied since she married Josiah;

bank accounts to the value of RTG 10 000 000 (10m).

Despite quite considerable efforts to devise a distribution plan for the estate the executor has been unable to get the various potential beneficiaries to agree on a distribution plan.

You have been called in by the executor to explain to the family how the Master might direct that the estate be distributed if they cannot agree on a distribution plan.

One major problem seems to be that Jezebel is insisting that as her son is Josiah's elder son he should inherit his father's estate, a claim which the three wives vigorously dispute. The three are of the view that Ndanyuka cannot inherit the estate because he is just a bastard. Zuze and Maria are adamant that Dorcas must move out of the cottage at the bottle store and that neither she nor her children can inherit any part of Josiah's estate because he was already married to both of them when he married her.

Draw up an explanation which sets out how the estate is likely to be distributed. (25 marks)

Question 7

(Please note there are two (2) sections to this question (a) and (b))

(a) After **Rudo Moyo's** death the documents reproduced on the next page were found in the top drawer of her desk. (Each of the 'box' contains an accurate copy of one of the documents.)

Assuming you were the Master of the High Court, setting out your reasons, how would you determine what constitutes the will that should direct the distribution of her estate? (10 marks) Last Will and Testament of **Rudo Moyo**

I **Rudo Moyo** being of sound and disposing mind, do hereby appoint my brother Bert Munch as my executor and leave my entire estate to my best friend Susan Butterdrop.

Signed

19 January 1987

Last Will and Testament of Rudo Moyo

I hereby bequeath to my brother Bert my house at 97 Sokostina Drive, Wastelands, Pasango village.

My executor/s need not provide security.

I **Rudo Moyo** do hereby appoint also as my executor my cousin Herbert Moyo.

I bequeath to my sister Cherri Moyo RTGS 5 million and to my nephew Merri Munch the same sum.

(b) Assuming that **Rudo Moyo** left twins born out of wedlock Terri and Perri who are ten (10) years old discuss whether are there any ways in which they can benefit from their mother's estate? (15 Marks)

(25 marks)

END OF QUESTION PAPER

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