

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B FINAL EXAMINATIONS**

**L387– SUCCESSION AND ADMINISTRATION OF ESTATES**

**DECEMBER 2018**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR (4)** questions.
2. All questions carry equal marks.



### Question 1

In the year 2000, Mr. Ntho executed a Will and kept it in his safe at his office. The Will appointed his wife's sister as a legatee and Mrs. Ntho, his wife, as his sole heir. He died in October 2018 and is survived by his wife, to whom he was married in community of property, and three children, namely, Neo, Lipalesa and Lebohang. Neo was born of him and his wife, while Lipalesa is his wife's biological child, who was adopted by him in terms of the Children's Protection and Welfare Act No. 7 of 2011. Lebohang is his son, whom he had with his wife's sister. The joint estate is made up of moveable, immoveable and intangible property, with the value being M600, 000. 00, M1, 000, 000. 00 and M300, 000.00, respectively.

You have been appointed as the executor dative of Mr. Ntho's estate and it has come to your attention that the 2000 will cannot be found. Distribute the assets accordingly and indicate reasons for such distribution.

[25 MARKS]

### Question 2

In view of Matsemela P "Modern freedom of testation in South Africa: Its application by the courts" 2015 JLSD 93, do the following:

(a) Discuss whether freedom of testation is absolute. (10 Marks)

(b) Critically discuss whether the constitutional limitations mentioned therein are likely to influence the courts of Lesotho. (15 Marks)

[25 MARKS]

### Question 3

(a) Distinguish between the following and give one (1) example in each case:

• The mother

Arson v Estate Beart

Ex parte Isaac  
Mokosi v Gafiso

Mokosi v Mokosi

Mokosi v Mokosi

Mokosi v Mokosi



(i) Direct substitution and *fideicommissary* substitution

(10 Marks)

(ii) *Dies cedit and dies venit*

(10 Marks)

(b) Explain the importance of Letters of administration and Letters of confirmation.

(5 Marks)

[25 MARKS]

#### Question 4

Refer to annexure 1 attached to the exam paper.

Masupha Letsie died on the 17<sup>th</sup> October, 2018. The following facts apply to his beneficiaries:

1. Mathealira survived his father, but died in a car accident as he was driving home from his 18<sup>th</sup> birthday party. He is survived by a 6 months old son, Thato Lebenya who lives with his mother, Botle Lebenya.
2. Masentle Letsie stops smoking but two blood tests reveal traces of nicotine in her blood. Further, the Women's Law Clinic cannot be identified.
3. Kuena Letsie has just concluded a contract of engagement with Napo Napo and they plan to get married in December, 2018.
4. Tholoana, the testator's sister, had a love affair with Tants'a Oena. The relationship soured after Tants'a discovered that Tholoana was pregnant with his best friend's child. Tants'a shot and killed her. Police investigations are on-going.

You are the executrix of his estate and the Master of the High Court has asked you to explain to the beneficiaries of the testator, the legal principles applicable



to the bequests made in clause 5 of his Will and their implications on the devolution of the estate.

### Question 5

Discuss the five requirements of a valid *fideicommissum*. [25 MARKS]

There must be gift over  
it must be clear  
there must be appointment of  
fiduciary and  
it must be valid  
w/o the property  
devolve to

### Question 6

Mr. Gates is deceased and has left a huge estate worth over M46, 000, 000. 00 (46 million Maloti), made up largely of immoveable property. He appointed his wife, Milania, to be his executrix testamentary and his estate has been reported to the Master of the High Court. The Master has requested a complete inventory, but the executrix has not been able to submit it because she does not know the value of most of the property. There is also a need to sell a residential house which is occupied by the deceased's minor children.

Milania has failed to file accounts on time on numerous occasions, explaining that the estate is complicated and requires expertise from different professionals. The Master has instigated proceedings to have Milania removed from office.

Clause 2 of the Mr. Gates's Will reads as follows:

"I instruct that the issue of furnishing security shall be dealt with in terms of the Administration of Estates Proclamation of 1935."

Identify the legal issues that are likely to arise out of these facts and advise the Master accordingly.

**[25 MARKS]**



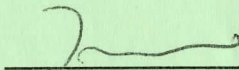
## LAST WILL AND TESTAMENT OF

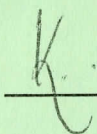
**MASUPHA LETSIE**

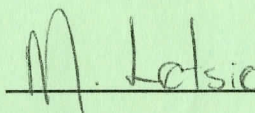
1. This is the last will and testament of:

1.1 Masupha Letsie (born 19 February, 1969) a male adult Mosotho of  
**Thetsane West, Maseru Urban Area** in the district of **Maseru**, Kingdom  
of Lesotho:

### AS WITNESSES

1.  \_\_\_\_\_

2.  \_\_\_\_\_

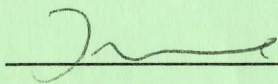
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**TESTATOR**

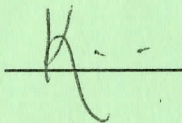
2. I confirm and declare that I have abandoned the Sesotho mode of life and have adopted a civil mode of life. I instruct and direct that my estate and its effects must be administered in accordance with the provisions of the Administration of Estates Proclamation of 1935.
3. I confirm and declare that I am married to 'Maseeiso Letsie in accordance with the Marriage Act of 1974 by civil rites and that marriage still subsists. I am married out of community of property and our antenuptial contract was registered in the deeds registry on the 1<sup>st</sup> December 2005.
4. I revoke, cancel and annul all previous wills, codicils or other testamentary writings or dispositions heretofore made or executed by me.
5. I proceed to appoint my wife, 'Maseeiso Letsie as my heir and further bequeath my estate and its effects in the manner hereinafter stipulated:
  - 5.1 I bequeath to my son Mathealira all lawful rights and title in my immovable property held under:

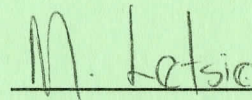
**AS WITNESSES**

1



2





**TESTATOR**



5.1.1 lease number 1/2011 in respect of which land is situated at Thetsane West in the district of Maseru. I direct that it shall pass to him on his 21<sup>st</sup> birthday;

5.1.2 lease number 55/2011 in respect of which land is situated at Lower Thetsane, Maseru urban Area in the district of Maseru. The bequest is to pass to him on the 1<sup>st</sup> January 2030;

5.1.3 lease number 2/2009 in respect of land which is situated at Ha Leqele, Maseru urban Area in the district of Maseru.

5.2 I further instruct that my son Seeiso shall be entitled to use the aforementioned immovable property in 5.1.3 for farming purposes, for a period of 10 years and that he has to pay the tuition fees of his sister Kuena, until she completes her tertiary education.

5.3 I bequeath to my niece, Grace Letsie, the sum of M150, 000, 00 in the event that Boitumelo 'Neko is elected as the president of the NUL Law Society in 2020. Should this not happen, the aforesaid legacy shall devolve upon my son Seeiso. *Direct*

5.4 I bequeath to my nephew Lerotholi Letsie, the sum of M25, 000, 00 if his subject or area of research for his PhD studies is Environmental Law.

AS WITNESSES

1 *[Signature]*

2 *[Signature]*

*post office  
code 8-11*

*8/11*  
M. Letsie

TESTATOR

*Seeiso must not have  
for per se  
Githenoni*



*limited condition*  
5.5 I bequeath to my nephew Masentle Letsie the sum of M300, 000, 00 on condition that she stops smoking. She is to receive the bequest when she proves within a period of eight months from the date of my death by means of a blood test that she has no trace of nicotine in her blood whatsoever. If the blood test reveals traces of nicotine, the said amount should pass to NUL Legal Aid Clinic and Women's Law Clinic. *negative postulate condition*

5.6 I bequeath my law text books to my daughter Kuena Letsie if she is admitted in the Faculty of Law at the National University of Lesotho and does not get married. *accrual joint by thing words and*

5.7 I bequeath my house situated in Khubetsoana, Maseru to my secretary Letsa Lipina; after she has built her own house, the mentioned property should go to my driver, Tants'a Oena.

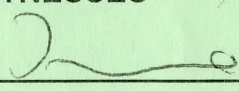
6. I nominate and appoint my wife, 'Maseeiso Letsie, the executrix of my estate and I specifically instruct that the executrix of our estate shall have the following powers:

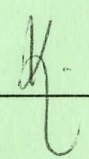
6.1 The executrix shall have all powers, rights and privileges which are or may be allowed at law;

6.2 The executrix shall have and may exercise the power of assumption;

6.3 I instruct and direct that it shall not be necessary, and my executrix shall not be required to furnish security to the Master of the High Court for the due performance of her duties.

**AS WITNESSES**

1. 

3. 

M. Letsie

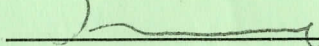
**TESTATOR**

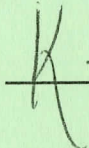


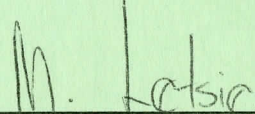
7. I bequeath our estate in the manner stipulated above subject to the condition that if my beneficiaries should predecease me, the inheritance shall revert to my estate.
8. I reserve unto myself the right at any time after execution and attestation and registration of this Will and Testament, whether by separate act or at the foot hereof, to make alterations to this my Will and Testament as I may deem fit in our sole and entire discretion, desiring and instructing that all such alterations or additions made under my hand shall be held as valid and effectual as if inserted herein.

DATED AT MASERU ON THIS 20<sup>TH</sup> DAY OF JANUARY 2013

AS WITNESSES

1.  \_\_\_\_\_

2.  \_\_\_\_\_

 \_\_\_\_\_

TESTATOR