

Question 1

Giving examples, distinguish between the following:

(a) Accrual and direct substitution **15 marks**

(b) Casual and mixed conditions **10 marks**

[25 MARKS]

Question 2

Freedom of testation is not absolute. With reference to case law, explain how constitutional considerations can limit one's freedom of testation.

25 MARKS

Question 3

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

Question 4

Mr and Mrs Chelete are deceased. They resided in Ha Ntaote, a rural village in the Thaba Tseka and were married in terms of customary law. During their lifetime, they lead a native way of live and were successful farmers. In 2019, they executed a joint and mutual will in which they made their three sons their heirs, following the death of both of them. They intentionally excluded their daughter, 'Mamosa from inheriting because she is married.

'Mamosa's husband, Linala wants to challenge the validity of the will in the courts of law, arguing that the exclusion of his wife is discriminatory and that the will cannot even be given effect to because the testator and the testatrix do not pass the test in section 3(b) of the Administration and Estates Proclamation No.9 of 1935. He further argues that a will cannot be executed by more than one person as it is a personal legal document.

Advise Linala on the prospects of success with the planned litigation.

25 MARKS

Question 5

Mr and Mrs Masene are married out of community of property. They have two sons, Thabo and Bonang. Mrs Masene adopted a child, Mpho before she got married and Mpho has been part of the family since marriage, with Mr Masene treating him as his biological child. Mr Masene also has a child, Maipato, whom he had outside marriage.

Mr Masene has since died without leaving a will behind. His estate is valued at M900, 000.00. With reference to relevant authorities, explain who is and who is not entitled to inherit from his estate.

25 marks

Question 6

(a) Sometime in 2000, Mr Thabelo executed a will in which he made his mother his sole heir. In 2016 he married Botle and have been blessed with 2 children, Thuso and Neo. In 2022 he executed a will witnessed by Thuso who was 10 years old and his lawyer Mendla. This subsequent will includes a clause which reads as follows:

“All to my mother, wife and children in equal shares.”

Mr Thabelo died in July 2023 and you are the executor of his estate. Advise his family on the legal issue that emanate from these facts.

10 marks

(b) Ntate Mahe is married in community of property to ‘Me ‘Makatlheho Mahe. They have two sons, Toka and Motlatsi. Mr Mahe died and is survived by his wife and sons. Subsequent to the death of her husband, ‘Me ‘Makatlheho

executed a will in which she made her brother the beneficiary of all her landed property. She has since died and Toka and Motlatsi plan to challenge the validity of the will arguing that they are legally entitled to a share from their mother's property.

Making reference to '**Mota v Mota and others C of A (CIV) 12/15**', advise Toka and Motlatsi on the prospects of success in their planned legal action.

15 marks

[25 MARKS]