



**FACULTY OF ARTS AND LAW
SCHOOL OF LAW**

COURSE NAME:	SUCCESSION
COURSE NO:	LA303
TIME ALLOWED:	2 hours
READING TIME:	10 minutes
NUMBER OF PAGES:	4 including this page
NUMBER OF QUESTIONS ON PAPER:	Six (6)
NUMBER OF QUESTIONS TO BE ANSWERED:	Four (4). Note: You must answer Question 1 from Part A and any three questions from Questions 2 to 6 in Part B.
MARK ALLOCATED FOR EACH QUESTION:	10 marks
TOTAL MARKS:	Forty percent (40%) of result.

MATERIALS PERMITTED IN EXAMINATION ROOM:

None

*Approved
J. P. ...
09.10.2006*

SPECIAL INSTRUCTIONS:

1. Complete the full paper. All candidates must complete Part A, Compulsory Question.
2. You need to obtain at least 15 marks in this paper to pass the course as a whole.
3. Read the questions and the instructions carefully.
4. You can answer any question with reference of the law of any USP country except where otherwise indicated or required.

LA303 SUCCESSION LAW – EXAMINATION, SEMESTER 2, 2006

PART A – COMPULSORY

Answer ALL the questions in this Part A.

Question 1

Mrs. Brown was 100 when she died in December, 2004, and she had made a will in December 2003. She left the whole of her estate to Mrs. Black who was her long-time neighbour and friend, and she used to come in and look after her while her niece Susan was at work. Mrs. Brown had made a previous will leaving everything to Susan but Susan died in 2000. On 10 December 2003, Mr. Gray, her solicitor, was contacted by Mrs. Black (the neighbour) and told that Mrs. Brown was very upset about her present will and that she wanted a new will prepared giving all her money to Mrs. Black. When Mr. Gray (the solicitor) arrived at the house that day he asked Mrs. Brown to read the 10-page will document, which she did attempt to read. Mr. Gray then asked Mrs. Brown if she understood the will, to which she replied “Yes, I am leaving all my money to Mrs. Black.” Mr. Gray then asked her “Is that what you want?” to which Mrs. Brown replied, “Yes”. Mr. Gray then asked Mrs. Brown to sign her will and then asked the two witnesses present to also sign.

After the passing away of Mrs. Brown, her only surviving brother Kevin, discovered that his sister Mrs. Brown had willed all her estate to Mrs. Black. He now has approached you to be his lawyer and to challenge the will and apply for probate over his sister’s will. Kevin is instructing you to challenge the will on the basis that the will was procured through the undue influence of Mrs. Black and that Mrs. Brown did not have the required knowledge and approval of the will.

Before starting the case, you have to give him some written advice on the following matters:

- (a) Advise Kevin on the legal requirements for proving undue influence in the making of a testamentary instrument?
- (b) Advise Kevin on the legal requirements for knowledge and approval in the execution of wills by a testator? Make reference to any case law.
- (c) Advise Kevin on the importance of extrinsic evidence and how that could be used to support his application?

(In answering this question, you may refer to any relevant case law or reference to the law of any USP country. **Do not** base your answer on the Family Provision legislation.)

PART B

CHOOSE ANY THREE (3) QUESTIONS FROM Question 2 to 6 in Part B

Question 2

Jimmy's will was properly executed in 1998. In 1999 he had an argument with the beneficiaries under the will. He took a bottle of acid and poured it on the will. The acid obscured half of the words in the will, in particular the clause appointing his son Ben executor and a clause giving his motor car to his daughter Jenny. The rest of the document which left the residue of his estate to his wife Maria was still legible. Jimmy died in 2000. The will still remained in his possession. Using scientific analysis it is still possible to read the words affected by the acid.

Give a legal advice on whether the will was validly revoked.

Question 3

The intestate distribution rules usually provide certain priority entitlements to spouses. In what respects is this so and what are the entitlements of surviving spouses under these rules?

Question 4

Write an essay explaining *donationes mortis causa*. Explain the legal requirements to this principle and use some practical hypothetical examples to support your essay. Identify some important cases that are relevant and useful in explaining this principle.

Question 5 - ANSWER EITHER A OR B

A. What are the main differences between a trustee and a legal personal representative?

OR

B. Explain the meaning of the terms "criterion certainty" and "administrative workability" in relation to construction of wills. Give an example to illustrate each of these two terms.

Question 6

Write brief notes on the following questions:

- a) Who owns the assets of the deceased person while the estate is being administered by the executor or administrator?**
- b) What grounds are there for the removal of an executor ?**
- c) What happens where say a large payment of money falls due to the deceased after death? The deceased did not know that this would be coming. What happens to it?**