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**SCHOOL OF LAW**

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**COURSE NAME:** Equity Trusts and Succession 2

**COURSE NO:** LA303

**TIME ALLOWED:** Two (2) hours

**READING TIME:** Ten (10) minutes

**NUMBER OF PAGES:** Three (3) excluding 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 7 in Part B.

**MARK ALLOCATED FOR EACH QUESTION:** Equal

**TOTAL MARKS:** Fifty percent (40%) of result.

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

None

**SPECIAL INSTRUCTIONS**

1. Complete the full paper.
  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.
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**Please do not turn over any page until you are told to do so.**

**PART A – COMPULSORY**

Answer **ALL** the questions in this Part A.

**Question 1**

David (testator) and Mary were married on April 10 1966. David executed a will on September 10, 1971. Mary predeceased him on December 10 1985. David died on March 10 2000, leaving an estate with a value of about \$250,000.

David and Mary had children from previous marriages and they are named in his Will. The rest of the Will is proper and clear, but the gifting provision of the Will is now the subject of a probate application asking for the court to interpret its meaning and effect. This is the particular provision in question:

*“IN THE EVENT that my said wife should predecease me, or die within thirty days of my decease or under circumstances making it uncertain which of us survived the other or simultaneously with me, then I GIVE, DEVISE AND BEQUEATH all my Estate, both real and personal, of every nature and kind and wheresoever situate to my said daughter, MARY J. BLIGE and to my said son USHER, and to my wife’s children, JONAH, PETER, MIRIAM and JAMES in equal shares per stirpes.”*

Imagine that you are the High Court judge sitting on this probate application. Give your judgment in answer of the following questions:

- (a) What type of a legacy/gift has David made in the Will provision in question and explain why?
- (b) Would the share of the residue of the estate which Mary would have received had he survived David, fall into and form part of the residue of the estate to be divided among the persons entitled to receive the residue? Make reference to any case law.
- (c) Would the residue in the estate be treated as a class gift. In answering this question, explain what a class gift is?
- (d) What would be final outcome of the application in question.

(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) QUESTIONS FROM Question 2 to 6 in Part B**

### **Question 2 - ANSWER PART A OR PART B**

**A.** The armchair principle allows some extrinsic evidence to be admitted to assist in the interpretation of wills in order to ascertain the “true intention” of the testator. Identify and explain 3 (three) forms of evidentiary material that you would propose in admitting in case to prove the true intention of the testator under their will. For each form of evidentiary material, say why it is important as to proving the intention of the testator under the will.

**OR**

**B.** Normally if a beneficiary named in a will has died the gift lapses. There are some exceptions to this. Explain what these exceptions are.

### **Question 3**

*“In the New Zealand case of Bishop v. O’Dea (Court of Appeal, CA 120/99, 20 October 1999), the Court stated in effect that in probate proceedings those propounding the will do not have to establish that the maker of the will had testamentary capacity, unless there is some evidence raising lack of capacity as a tenable issue.”*

In your view, provide at least 4 (four) fact scenarios or situations where the testator of a will can be found to have a lack of capacity.

### **Question 4**

Write an essay explaining the doctrine of dependant relative revocation. Identify at least three circumstances by which the doctrine will apply and give examples of each one in your answer. Also explain why dependant relative revocation is different to condition revocation.

**Question 5 - ANSWER BOTH A and B**

**A.** Explain with reference to decided cases the term “*donationes mortis causa*” and outline the legal requirements for *donationes mortis causa*. For each requirement mentioned, provide a practical and realistic example in illustrating it.

**AND**

**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 (no more than a page on each) on any 3 (three) of the following. Do not answer more than 3 (three):

- (a) The rule of despair
- (b) Commorientes
- (c) Ademption of specific legacies
- (d) Executor de son tort
- (e) Administration with a will annexed