

- (7) Do the common-law presumptions regarding the revocation of wills still have any application in our law?

**LECTURE 5: CHAPTER 6 and 7 - REVIVAL OF A REVOKED WILL;
CAPACITY TO MAKE A WILL**

STUDY MATERIAL

Study guide chs 6 and 7

Prescribed cases

Wood v Estate Fawcus 1935 CPD 350

Estate Orpen v Estate Atkinson 1966 (4) SA 589 (A)

Braun v Blann and Botha 1984 (2) SA 850 (A)

QUESTIONS

- (1) Write a short note on the revival of a revoked will.
- (2) What are the requirements for the revival of a revoked will?
- (3) Two facets of the decision in *Wood v Estate Fawcus* are clear. What are these facets?
- (4) May the following persons make a will?
- (a) an insane person
 - (b) a prodigal
 - (c) a person who has been certified insane
 - (d) a person who is under the influence of hypnosis or drugs
- (5) A testator must be mentally capable to make a will and he or she must also have the necessary intention. Discuss.
- (6) Write a note on the delegation of testamentary power (power of appointment).
- (7) Discuss briefly the exceptions to the rule that a testator must exercise his or her testamentary power himself.
- (8) Can a testator confer a power of appointment upon a trustee?

LECTURE 6: CHAPTER 8 - CAPACITY TO BENEFIT UNDER A WILL
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STUDY MATERIAL

Study guide ch 8

Prescribed cases

Gafin v Kavin 1980 (3) SA 1104 (W)

Casey v The Master 1992 (4) SA 505 (N)

QUESTIONS

- (1) Can an unborn person benefit under a will?
- (2) Write a note on a bequest to a class of persons.
- (3) Are all the persons who caused the death of a deceased incapable of inheriting from him or her? Discuss.
- (4) May a witness to a will, the person who signs the will on behalf of the testator and the person who writes out the will of another inherit under that will?

LECTURE 7: CHAPTER 9 - VESTING OF THE BEQUEATHED BENEFIT

STUDY MATERIAL

Study guide ch 9

Prescribed case

Botha v Botha 1979 (3) SA 792 (T)

QUESTIONS

- (1) Distinguish briefly between *dies cedit* and *dies venit*.
- (2) Indicate when *dies cedit* and *dies venit* take place for S and W in the following examples:

"I leave my farm to my son S subject to a usufruct in favour of my wife W."

"I leave my farm to my wife W and if she should remarry the farm must go to my son S." (You cannot answer this question at this stage. Come back to it after you have studied ch 12.)

- (3) What do you understand by "acceleration of benefits"?

LECTURE 8: CHAPTER 10 bl 82 - 97 - THE CONTENT OF WILLS
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STUDY MATERIAL

Study guide ch 10 pp 82 - 97

Prescribed cases

Barrow v The Master 1960 (3) SA 253 (E)

Grusd v Grusd 1946 AD 465

QUESTIONS

- (1) What do you understand by the term "freedom of testation"? Discuss the limitations on a person's freedom of testation in our law.
- (2) May a court make alterations to a will? Discuss.
- (3) Does a child have a claim for maintenance out of the deceased estate of his or her parent?
- (4) Write a note on the right of the surviving spouse to claim maintenance out of the deceased spouse's estate.
- (5) Describe and distinguish between inheritances and legacies.
- (6) Are the differences between an heir and a legatee still of importance today?
- (7) What do you understand by the following concepts?
 - (a) a prelegacy
 - (b) a bequest price
 - (c) ademption
- (8) Mention five ways in which a legacy can fail.
- (9) What is the difference between a time clause and a condition?

- (10) What is the difference between a suspensive time clause and a suspensive condition?
- (11) What is the difference between a resolutive (terminative) time clause and a resolutive (terminative) condition?
- (12) Discuss the rights and duties of the parties concerned in the following bequests:
- (a) "I leave my farm to my son, but he may not take it before he turns 21 years of age."
 - (b) "I leave my farm to my son, but when he turns 60 or when he dies, the farm must go to the South African government."
 - (c) "I leave my farm to my son if he plays rugby for Western Province."
 - (d) "I leave my farm to my wife but if she remarries the farm must go to my son."

LECTURE 9: CHAPTER 10 BI 97 - 105 - THE CONTENT OF WILLS

STUDY MATERIAL

Study guide ch 10 pp 97 - 105

Prescribed cases

Levy v Schwartz 1948 (4) SA 930 (W)

Barclays Bank DC & O v Anderson 1959 (2) SA 478 (T)

Ex parte Swanevelder 1949 (1) SA 733 (O)

QUESTIONS

- (1) Write a note on conditions that prohibit a person from marrying.
- (2) Discuss the following bequests:
- (a) "I leave my house to my daughter on condition that she does not marry out of the Jewish faith."
 - (b) "I leave my farm to my daughter provided she settles on the farm permanently and her husband accepts her surname."
 - (c) "I leave R50 000 to my nephew but he must look after my grave for the next 20 years."

- (d) "I leave my entire estate to my son, but he must pay R1 000 each month to my daughter for the rest of her life."
- (3) Describe and distinguish between a *modus* in favour of a third person, a suspensive condition and a terminative condition.

LECTURE 10: CHAPTER 11 - SUBSTITUTION

STUDY MATERIAL

Study guide ch 11

Prescribed case

Van Zyl v Van Zyl 1951 (3) SA 288 (A)

QUESTIONS

- (1) What is understood by the term "substitution?"
- (2) What is the basic difference between direct substitution and fideicommissary substitution?
- (3) Describe and distinguish between direct substitution and fideicommissary substitution.
- (4) Our law recognises a presumption in favour of direct substitution against fideicommissary substitution. Discuss.

LECTURES 11: CHAPTER 12 - FIDEICOMMISSUM

STUDY MATERIAL

Study guide ch 12

Prescribed case

Ex parte Stranack 1974 (2) SA 692 (D)

Du Plessis v Strauss 1988 (2) SA 105 (A)

QUESTIONS

- (1) How is the conditional *fideicommissum* construed in our law?
- (2) Write a note on the *fideicommissum residui*.
- (3) Write an essay on the position of the fiduciary.
- (4) What is the nature of the fideicommissary's right while the fiduciary is still the owner of the fideicommissary property?
- (5) Discuss briefly the court's power to remove restrictions on immovable property.
- (6) Describe and distinguish briefly between a *fideicommissum* and a usufruct.
- (7) Discuss the following bequests:
 - (a) "I leave my farm to my son S. If he does not inherit, the farm must go to my brother B." S dies before the testator and leaves a child, C.
 - (b) "I leave my farm to K. If he dies without leaving a child, the farm must go to my brother B". K dies a few years after the testator, leaving a child, C. Has a tacit *fideicommissum* been created in favour of C?

LECTURE 12: CHAPTER 13 - THE TRUST**STUDY MATERIAL**

Study guide ch 13

QUESTIONS

- (1) How is the trust defined in the Trust Property Control Act?
- (2) What forms of trust are governed by the Trust Property Control Act? (This question is the same as question 1 above.)
- (3) Write a note on the establishment of a trust.
- (4) What requirement must be met before a trustee may act as trustee?
- (5) Who can appoint a trustee?
- (6) Can a trustee in the trust document indemnify himself or herself against liability for breach of trust where he or she failed to show the necessary degree of care and diligence?

- (6) What is understood by the doctrine of election? Why is it said that massing is only an example of the doctrine of election?
- (7) What is meant by the concept "right of accrual?"
- (8) Explain the difference between the consequences of the following bequests in T's will (T is a widower):
- (a) "I leave my yacht to my sons B and C." B dies before the testator and leaves a son D.
 - (b) "I leave my yacht to my two friends B and C." B dies before the testator and leaves a son D.

[Hint: Question 8(a) concerns descendants of the testator - therefore, s2C is relevant. Question 8(b) concerns friends - therefore, accrual is relevant.]

- (9) Explain the difference between the consequences of the following bequests:
- (a) "I leave my house to my grandchildren B and C." B dies before the testator and does not leave descendants.
 - (b) "I leave my house to my grandchildren B and C in the proportion two to one". B dies before the testator and does not leave descendants.

[Hint: There are no further descendants of the testator - therefore, s2C does not apply. You have to discuss the various indications (*coniecturae*) of accrual here.]

- (10) In what circumstances will accrual take place in spite of a joinder *verbis tantum*?
- (11) In what circumstances will the right of accrual not operate?

LECTURE 14: CHAPTER 16 - INTERPRETATION OF WILLS

STUDY MATERIAL

Study guide ch 16

Prescribed cases

Botha v The Master 1976 (3) SA 597 (E)

Ex Parte Van der Spuy 1966 (3) SA 169 (T)

- (7) What are the master's powers in respect of the furnishing of security by the trustee?
- (8) Discuss the trustee's duty to keep trust assets separate from his or her own.
- (9) To what remuneration is a trustee entitled?
- (10) How can a trustee's services be terminated?
- (11) In what circumstances can the master remove a trustee from his or her office?
- (12) Can the founder of a trust be a beneficiary under that trust?
- (13) Can the trustee of a trust be a beneficiary under that trust?
- (14) Write a note on the insolvency of the trustee?
- (15) Write a note on a trust for an impersonal purpose.
- (16) May the court vary trust provisions? Discuss.
- (17) In which ways can a trust be terminated?

LECTURE 13: CHAPTER 14 en 15 - MASSING AND ELECTION; THE RIGHT OF ACCRUAL
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STUDY MATERIAL

Study guide ch 14 and 15

Prescribed case

Lello v Dales 1971 (2) SA 330 (A)

QUESTIONS

- (1) Describe and distinguish between joint and mutual wills.
- (2) What is understood by the term "massing"?
- (3) What are the requirements for massing under section 37 of Act 66 of 1965?
- (4) What are the consequences of massing?
- (5) How was the common-law position on the the rights of ultimate beneficiaries changed by statute?

QUESTIONS

- (1) What are the main principles of the interpretation of wills?
- (2) What is meant by "arm-chair evidence?"
- (3) Write a note on the use of extrinsic evidence in the interpretation of wills.
- (4) What kinds of rectification are recognised in our law?
- (5) Write a note on presumptions that are recognised in our law in order to assist the courts in interpreting wills.

LECTURE 15: CHAPTER 17, 18 and 19 - SUCCESSION BY VIRTUE OF A CONTRACT; ADMINISTRATION OF ESTATES; COLLATION

STUDY MATERIAL

Study guide chs 17, 18 and 19

Prescribed cases

Ex parte Executors Estate Everard 1938 TPD 190

Narshi v Ranchod 1984 (3) SA 926 (C)

QUESTIONS

- (1) Describe and distinguish between a
 - (a) *pactum successorium*
 - (b) *pactum de non succedendo*
 - (c) *donatio mortis causa*
- (2) Why is it important to be able to distinguish between a *donatio inter vivos* and a *donatio mortis causa*?
- (3) Why is a *donatio mortis causa* a multilateral juristic act?
- (4) Mention the two factors that must be present before a bequest will be considered a *donatio mortis causa*.
- (5) Who is the owner of a deceased estate? Discuss.
- (6) What are the duties of an executor?

- (7) What is meant by collation?
- (8) Who must collate?
- (9) Who is entitled to collation?
- (10) Which benefits have to be collated?

We trust that you will find these questions helpful.

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