

## **WARNING**

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2017

<b>FINAL EXAMINATION</b>	<b>DURATION</b>				
<b>LWA325 – Succession</b>	<table border="1"> <tr> <td>Reading Time:</td> <td><b>20</b> minutes</td> </tr> <tr> <td>Writing Time:</td> <td><b>180</b> minutes</td> </tr> </table>	Reading Time:	<b>20</b> minutes	Writing Time:	<b>180</b> minutes
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**INSTRUCTIONS TO CANDIDATES**

1. This examination paper contains **FOUR (4)** questions.
2. Candidates must be answer **All FOUR (4)** questions but question 4 allows a choice of 4 of the 5 sub-questions that comprise question 4..
3. This examination accounts for **fifty (50)** assessment marks (**50% of the unit assessment**).
4. Each question has the **marking value** set out immediately following each question.
5. Use only black or dark blue ink. Do not write in pencil.
6. Read ALL questions carefully.
7. Please ensure that your Name and Student Number are written clearly in the space provided at the top cover page of the examination answer booklet(s) and on this examination question paper.

**EXAM CONDITIONS**

**You may begin writing from the commencement of the examination session.** The reading time indicated above is provided as a guide only.

This is an **OPEN BOOK** examination

Any calculator is permitted

**Any handwritten** material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

<b>ADDITIONAL AUTHORISED MATERIALS</b>	<b>EXAMINATION MATERIALS TO BE SUPPLIED</b>
<b>Any printed material</b> with the exception of CDU Library books	2 x 20 Page Book 2 x Scrap Paper

**THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.**

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BLANK.**

## EXAMINATION QUESTION PAPER

### Answer All Four (4) Questions

**HOWEVER NOTE – Question 4 allows candidates to make a choice of 4 of the 5 sub-questions that comprise Question 4.**

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#### Question 1

Belle was a successful business woman who died in Darwin in January 2017. At the time of her death she was married to David with whom she had 4 adult children, Nick, Peter, Jason and Thomas. Belle and David had a long and tumultuous marriage and they separated in 2012. Belle resided in a house in Cullen Bay which Belle and her eldest son Nick owned together as joint tenants. David continued to reside in the matrimonial home in Fannie Bay which was owned by Belle and David as joint tenants.

In 2013 Belle began a relationship with Jonathan and by early 2014, they were living together in the Cullen Bay property. This relationship caused distress and friction between Belle and Thomas, who was very close to his father, and resulted in them becoming estranged. Notwithstanding the estrangement, in late 2014, after Thomas found himself in considerable debt, Belle loaned Thomas the sum of \$200,000.

In late 2015, Belle and Jonathan had a child together named Charles and also legally adopted a 15 year old child from India named Pi whom she had sponsored over the last 12 years via World Vision.

In late 2016, Belle had consulted with her solicitor to provide instructions for a will. A draft will was sent to Belle before her death for her consideration. Belle sent her solicitor an email stating that she wanted to make 1 change to her will to include a legacy to World Vision in the sum of \$250,000 but that she was otherwise happy with the draft will which left her entire estate to Jonathan and her children in equal shares. The amendment was made and the final will was sent to Belle for execution. Unfortunately Belle didn't get the chance to sign the will.

In 2016 Belle commenced an application for divorce and property proceedings in the Family Court but before the hearing of the divorce, Belle was killed by her son Jason, who then also committed suicide leaving behind his 7 month pregnant wife Maggie and their daughter Betty.

A few weeks after Belle's death, Jonathon discovered that Nick was trying to sell the Cullen Bay house and Belle's exclusive collection of art by Geoff Todd valued at \$80,000 which hangs in the Cullen Bay home.

At the time of her death, Belle owned:

1. cash in her bank accounts in the amount of \$250,000;
2. personal chattels located in the Fannie Bay home valued at \$50,000;
3. an apartment in South Australia valued at \$2M;
4. life insurance policy valued at \$500,000;

5. superannuation valued at \$150,000;
6. her interest in the Cullen Bay house and its contents;
7. her collection of art by Geoff Todd; and
8. her interest in the matrimonial home at Fannie Bay.

Jonathon seeks your legal advice as to what steps, if any, he can take to urgently prevent Nick's attempts to sell the house and art collection, and how Belle's estate will be dealt with and distributed going forward. Refer to the relevant legislation and common law in your advice.

**(15 marks)**

## **Question 2**

The deceased, Jane Hastings, had two daughters, Betty and Veronica. Jane was married to Tom Hastings for over 25 years. In March 2014, Jane left her husband and took up residence with Joe McLeod, a university student who was 23 years her junior and about the same age as her daughters.

In June 2016 Mrs Hastings was diagnosed with a terminal, malignant brain tumour from which she died on 15 February 2017. Shortly prior to her death, she applied for a divorce and executed a new will on 3 January 2017. The divorce was granted on 28 January 2017.

At the time of her death, Mrs Hastings main assets were:

1. A house located at 3 Margaret Street, Stuart Park valued at \$1M;
2. \$125,000 held in a Westpac account in her name only; and
3. \$155,000 held in a joint Commonwealth Bank account bank in the names of both Mr. and Mrs. Hastings without any specification of whether the ownership was joint or in common.

The terms of Mrs. Hastings will provided for Mrs Hastings estate to be distributed as follows:

1. The Stuart Park property was to be held on trust for Mr McLeod for life and thereafter to her daughters in equal shares;
2. The residue of her estate was left as to 50% to Mr McLeod and as to 25% each to her daughters in equal shares.

Betty and Veronica seek to challenge the will on the grounds that their mother did not have capacity to make it, and did not know of or approve its contents. Provide Betty and Veronica with advice as to their prospects of success with reference to the relevant decided cases. Include in your advice how the assets of the estate are likely to be distributed having regard to the relevant principles, and discuss the application of the burden and onus of proof.

**(10 marks)**

### Question 3

Answer parts (a), (b) and (c):

- (a) Discuss the characteristics of a will and contrast with 3 non-testamentary devolutions of property following death.
- (b) Explain the differences of operation and function between a court of probate and a court of construction.
- (c) Discuss the effects of a republication of a will with reference to decided cases and a factual illustration.

**(10 marks)**

### Question 4

Answer 4 of the 5 questions below:

1. Discuss the purpose of section 27 of the *Wills Act* (NT) with reference to decided cases and factual illustrations.
2. Discuss the scope and application of section 10 of the *Wills Act* (NT) with reference to decided cases and factual illustrations.
3. Explain the various forms of the testamentary process of revocation in relation to wills with reference to any relevant statutory provision and relevant cases.
4. Explain the doctrine of dependent relative revocation with reference to relevant cases.
5. Mickey and Minnie are siblings aged 25 and 22 respectively. In his will Mickey leaves his entire estate to Minnie. In Minnie's will she leaves her entire estate to her husband Michael. Mickey and Minnie are killed in the same car accident. Order of death cannot be established by the evidence. Mickey is survived by both his parents. Minnie is survived by her parents and her husband Michael. With reference to the relevant statutory provisions and common law principles, explain who will inherit Mickey and Minnie's respective estates?

**(15 marks)**

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**END OF EXAMINATION QUESTION PAPER**

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