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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2019

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

1. This examination paper contains two parts: **Part A** and **Part B**. There are 6 questions in Part A and 2 questions in Part B.
2. Candidates must **ANSWER ALL SIX QUESTIONS** in **Part A**. Each question in Part A is worth 5 marks. You should allow roughly 20 minutes each to answer those questions.
3. There are two questions in **Part B**. Candidates must select and **ANSWER ONLY ONE** of the two questions in **Part B**. Each question in Part B is worth 20 marks. You should allow roughly an hour to answer the question which you select.
4. This examination accounts for **fifty (50)** assessment marks (**50% of the unit assessment**).
5. Each question has the **marking value** set out immediately following each question.
6. Use only black or dark blue ink. Do not write in pencil.
7. Read ALL questions carefully.
8. 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)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material 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

PART A Answer All Six (6) Questions

Question 1

Mary Evans is 16 years old and an extremely talented singer. She recently entered and won the national competition, “*Australia’s Got Talent*” and was awarded \$2.5 million in prize money, along with a recording contract with Sony Music which guarantees Mary an income of at least \$100 000 per annum for the next 5 years, along with a percentage of the album sales. Mary has a sad past. Her mother abandoned her at 2 years of age and her father has raised her and supported her solely since then.

Explain what options are available to Mary to ensure that her father will benefit from her estate if anything happens to her and not her mother, citing relevant legislation and case-law.

(5 marks)

Question 2

Explain in detail the legal sources of professional obligations for a solicitor instructed by a client to draft a will and provide two key case examples.

(5 marks)

Question 3

Explain how a testator could voluntarily revoke their will and what is required to effectively do so citing relevant caselaw.

(5 marks)

Question 4

Provide an example of a sample clause in a will which would achieve each of the following:

- (a) A pecuniary gift
- (b) A general gift
- (c) A demonstrative gift
- (d) A specific gift; and
- (e) A residuary gift

(5 marks)

Question 5

Explain the concept of testamentary capacity citing key cases.

(5 marks)

Question 6

Explain, citing relevant authorities, when extrinsic evidence might be admitted by a court of construction both at common law and in statute.

(5 marks)

PART B
Answer only one (1) of the following two (2) questions

Question 7

Roger Fulgham died intestate. Roger had separated from his wife, Anne, 15 years ago and had since commenced a de facto relationship with Millie and they have been living together for the last 4 years. Roger had 3 children with his wife, Anne, named Mildred, Lucy and Aaron. Sadly, Aaron passed away in a motor vehicle accident a week after the death of his father, Roger. Millie is pregnant with her and Roger's first child, due in 10 weeks.

Roger left behind the following assets and liabilities:

1. The house where he and Millie resided registered in the sole name of Roger situated at 12 Lark Court, Wulagi valued at \$650,000
2. A unit on Cavenagh Street, Darwin registered in the joint names of Millie and Roger worth \$380 000, which is the subject of a registered mortgage to BankWest in the amount of \$420,000.
3. A death benefit with Australian Super consisting of \$600 000 including the insurance component. Roger had a non-lapsing, binding death benefit nomination in favour of his wife, Anne, which he had forgotten to update.
4. 5000 shares in Rio Tinto Mining worth \$28,000
5. A term deposit with the Westpac Bank with a balance of \$150 000
6. A life insurance policy of \$1,500,000 with TAL.

Advise Millie (citing relevant legislation) as to how Roger's estate will be distributed on intestacy including specific advice on the following:

- (a) What assets form part of Roger's estate to be distributed on intestacy;
- (b) How will Roger's estate be distributed on intestacy and to whom?
- (c) Is Millie's unborn child entitled to anything?
- (d) Can Millie keep the house in Wulagi?
- (e) What happens to Roger's personal chattels?
- (f) What difference would it make if Roger was Aboriginal?

(20 marks)

Question 8

Abbott Costello passed away on 28 March 2019. He left a valid will, dated 3 October 2008. The will contained the following key provisions.

LAST WILL AND TESTAMENT OF ABBOTT COSTELLO

This is the last will and testament of me, **Abbott Costello**, of 12 Miriam Lane, Gelford in the Northern Territory of Australia.

1. I revoke all former wills and testamentary dispositions previously made by me.
2. I appoint my dear friend, **Thomas Simpson** of 49 Stimulus Drive, Nightcliff in the Northern Territory of Australia as my executor and trustee of my estate.

3. I give all my shares in St George Bank Limited to my step-son **Nicholas Stewart** provided he survives me;
4. I give the personal effects in my principal residence, including its garage, outbuildings and garden at my death to my wife.
5. I give to my said wife, **Louise Costello** my principal residence at my death.
6. I give the residue of my estate to the following in equal shares:
 - a. My wife **Louise Costello**;
 - b. My step-son **Nicholas Stewart**;
 - c. My step-daughter **Catherine Stewart**;
 - d. My ex-wife **Naomi Costello**; and
 - e. The RSPCA.

*****END OF WILL *****

At the time Abbott executed the will, he was engaged to his now wife, **Louise Costello**, pending his divorce application with his estranged wife, **Naomi**, being made final. **Nicholas** and **Catherine** are **Naomi's** children from a previous relationship but **Abbott** brought them up since they were 2 and 5 years of age respectively. **Catherine** is 35, married with 2 children and **Nicholas** has 3 children, **Stacy**, **Midge** and **Penelope**. Unfortunately, **Nicholas** passed away in a car accident on 5 September 2016.

Abbott left the following assets at the date of his death:

1. 13,100 shares in Westpac Banking Corporation (these shares had been issued to Abbott on the takeover of Westpac of St George in 2008. At the time of making the will and prior to the takeover by Westpac, Abbott had been the holder of 10,000 shares in St George Bank;
2. A savings account and two terms deposits with St George bank;
3. A house at 12 Miriam Lane, Gelford in the Northern Territory of Australia;
4. An accommodation bond from Southern Cross Care where Abbott had been living for 4 years prior to his death. Prior to that, Abbott lived at his property in Miriam Lane, where Louise continues to reside to this day.

Advise, Thomas, the executor as to how he must distribute Abbott's estate including specific advice regarding the following:

1. What is the effect of the gift in clause 3?
2. Who is the 'wife' referred to in clause 4?
3. What is the effect of the gift in clause 5?
4. Who receives the gift in clause 6(b) of the will?
5. What is the effect of clause 6(e)?

(20 marks)

END OF EXAMINATION QUESTION PAPER
