

Mr Hay

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NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1988

LAW OF SUCCESSION

(Tuesday, May 17, 1988)

Instructions to Students

- a) Time: 3½ hours
 - b) Answer FIVE questions only.
 - c) In answering any question a candidate may reply by reference to the Law of any Commonwealth Caribbean territory, but must state at the beginning of the answer the name of the relevant territory.
 - d) It is unnecessary to transcribe the questions you attempt.
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QUESTION 1

By an undated will, duly executed, Thomas Tenn appointed X and Y, his Executors, and left all his estate to Bernice Tenn. A codicil, duly executed, dated January 1, 1987, reads as follows:

"Further to my will I appoint C and D my Executors in case X and Y are not willing to act. I give \$1000 to my sister Jane....."

Thomas Tenn died on January 1, 1988. Y died on April 1, 1988.

- (a) Who is/are entitled to a grant of representation?
- (b) Draft an appropriate Oath;
- (c) Assuming that X is now serving a custodial sentence of ten (10) years, how would you proceed in respect of obtaining a grant?

QUESTION 2

X and Y, the Executors of the estate of John Denham, deceased, retained Tom Lawe, an attorney-at-law, for purposes of obtaining probate of the will. Unfortunately, Tom Lawe cannot now find the will to proceed with the probate and there is hardly any prospect of it being found. There is however available, a photocopy of the will which was made by the Executors.

- (a) Can the copy be admitted to probate?
- (b) Prepare in draft form an appropriate application in the matter.

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QUESTION 3

The personal representative of the estate of Carl Penn, deceased, is interested in purchasing the 10-acre farm, part of the estate, from the beneficiaries who are willing to sell.

- (a) What, if any, constraints are placed on such dealings?
- (b) How should the personal representative proceed with a view to purchase?

QUESTION 4

- (a) D died on February 1, 1988, having appointed X and Y, his Executors. However, X does not wish to apply for probate and wants to know his rights in this regard.
Advise him.
 - (b) X has duly renounced his excutorship.
Prepare in draft, a form of Oath to lead a grant on behalf of Y.
 - (c) Y having been appointed sole Executor, died before he was able to wind up the estate.

How would you proceed with a view to winding up the estate?
List the necessary documents.
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QUESTION 5

P, having made a will, died in your jurisdiction leaving assets in England and in your jurisdiction. You have been consulted by the Executors who wish to proceed with the administration of the estate on behalf of the beneficiaries.

Outline the steps that should be followed with a view to the collection, control and distribution of the assets in England.

QUESTION 6

In 1985, James Doe rented a house from Tom as a monthly tenant. In 1986 he borrowed \$5000 from Tom. Tom died in January 1987, after making a will, in which he appointed James Doe his sole Executor. Tom left all his estate to his son, Simon. Despite repeated requests by Simon, James Doe has refused to apply for probate of the will and to pay any rent to Simon. Simon now consults you in order to have the estate administered and to realize his entitlement.

What action may be taken against James Doe? Outline the steps you would take.

QUESTION 7

By his will, T appointed Executors and left his estate partly to his relatives and partly to two charitable institutions. On T's death some of the relatives indicated to the Executors that T was not of sound mind. Other relatives would prefer that T's mental health be not brought into question and that the will should stand. The Executors have now consulted you as to how they should deal with the matter.

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Advise the Executors and outline the procedural steps you would take in the circumstances to resolve the issue.

QUESTION 8

(a) When is an estate insolvent, and what are the rights of a secured creditor in such a case?

(b) Outline the various ways in which an insolvent estate may be administered.
