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LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1990

LAW OF SUCCESSION

(Monday, August, 13, 1990)

Instructions to students

- a) Time: 3 1/2 hours
  - b) Answer FIVE question
  - 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

In 1985 Albert Bourne made and duly executed a will in which he left \$10,00 to Donald, 2 acres of land to Edgar and 400 shares in the Golden Franchise Company Ltd. to Marilyn.

Two years later Bourne drew a line through the \$10,000 gift to Donald and immediately above this figure wrote \$14,000. This change was made in the presence of Felix and Fiona, friends of the testator. Felix, Fiona and then the testator signed their names on the adjoining margin.

The testator who had become estranged from Edgar then took a fibre tip pen and completely obliterated the gift of 2 acres to Edgar and thereupon declared the will to be his last will and testament. The change was then initialled by Felix and Fiona.

The testator then pasted a bit of of brown paper over the gift made to Marilyn and wrote on top of the paper "\$2,000". This changed was neither signed by him nor attested. It is impossible to read what is written under the bit of brown paper.

Write an opinion as to the validity and effect of the changes made to the will by the testator.

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QUESTION 2

On the 15th February, 1989 Alex White dies leaving a will in which he appoints Carol Davis his sole executrix.

To date she has failed to apply for a grant of probate despite numerous oral and other requests made by White's widow and sole beneficiary, Celia, calling upon her to do so.

Celia, who is anxious to have her husband's will proved comes to you for advice.

- (a) Advise Celia as to the procedural steps which may be taken to achieve this objective and list the documents to be filed;
- (b) Would there be any difference if in March 1989 Davis had written to the testator's debtors calling upon them to honour their outstanding debts and had collected a few small debts but had nevertheless made no effort to apply for the necessary grant?—

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QUESTION 3

- (a) Distinguish (i) a grant of administration de bonis non administratis (ii) a grant of administration ad colligenda bona and (iii) a grant of administration pendente lite.

- (b) Thomas Stone died having by his will appointed John Evans sole executor. John Evans obtained probate of the will but died not having fully administered the estate. John Evans left no will.

Advise as to the procedure to be adopted to complete the administration of the estate and list the relevant documents to be filed.

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QUESTION 4

Romeo Freeman died, having his will given all his property to "my wife Hilda Mae Freeman". He is survived by a lawful wife Mary Jane Freeman from whom he had been separated for a number of years. He is also survived by Hilda Mae Thompson with whom he had gone through a ceremony of marriage and with whom he had lived. Hilda Mae believed herself and was reputed in the neighbourhood to be his wife.

Both Mary Jane Freeman and Hilda Mae Thompson claim to be entitled to the testator's property.

- (a) How would you proceed with a view to resolving the matter?
- (b) Draft the appropriate documents.

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QUESTION 5

Amos Gilbey died leaving the following will:

- " 1. This is the last will and testament of me  
Amos Gilbey of Green Hill in the parish of  
St. Georges.
2. I revoke all wills and ~~testamentary-instruments-~~  
heretofore by me made
3. I appoint my son <sup>Uriah</sup>~~Manson~~ Gilbey and... my executors.  
He must pay all my debts and expenses.
4. I give my dwelling house to my daughter Enid  
~~Gilbey~~<sup>Thompson</sup>
5. The rest of my estate to be divided between <sup>Uriah</sup>~~Manson~~

and Enid his

Amos X Gilbey

mark

Witness: Frederick Brown      Witness: Ralph Smith.

The changes in the will were made before it was executed.

- (a) Draft the affidavit of attesting witness.
- (b) Assume that the will has marks from a paper clip, a staple is fastened to it, a hole had been punched in it to secure it to the attorney's office file and that part of it had been eaten by moths (no word being obliterated).

Draft an appropriate document to explain the state of the will.

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QUESTION 6

(a) What are the powers and duties of an executor in relation to the business enterprise of the testator?

(b) Fitz Foote owns and operates a small viable shoe manufacturing business employing fifteen persons.

He consults you and informs you that he would like the business to continue after his death and would like to give it by will to his son Burns Foote.

Draft the appropriate clause only.

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QUESTION 7

Tom Francis was a passenger on board an aeroplane which crashed on the 1st September, 1989. He has neither been seen nor heard of since and is believed to have perished in the crash.

Tom had made a will on the 24th May 1989 in which he appointed his wife, Thelma, sole executrix.

Thelma wishes to administer Tom's estate and consults you. The estate is worth \$450,000.

- (a) Set out the procedure to be adopted as a preliminary step to an application for a grant of representation and the document(s) to be filed.
- (b) Assume that the preliminary procedure has been successfully completed, list the documents to be filed to complete the application for a grant representation.

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QUESTION 8

Tom Cross duly executed his will on the 1st June 1985 in which he named Abe Link and Brad Jones executors. He gave a legacy of \$10,000 to Monty Peters, his real estate to his wife, Ula, for life and thereafter to his adult children Vicky and Wally in equal shares. He gave the residue of his estate to another adult child Zack.

Abe Link died on the 15th December, 1989 having named Xavier Johns and Yoko Chin his executors in his will.

Tom Cross died on the 20th February, 1990.

Brad Jones had quarrelled with Tom Cross shortly before the latter's death, and upon taking legal advice, duly executed a Deed of Renunciation of his Executorship on the 18th April, 1990.

(a) Advise as to:

- (i) what type of grant of representation may be sought in the estate of Tom Cross;
- (ii) who may apply for this grant in the circumstances, giving reasons.

(b) Draft an appropriate Oath (or other document if the question is being answered by reference to the law of a territory where an Oath is not required) to lead the grant of representation.

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