

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1991

LAW OF SUCCESSION

(Tuesday, August 13, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
 - b) Answer FIVE questions only
 - c) In answering any question a student 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

James Haynes died on March 1, 1990, having duly executed his will and appointed George Marks and Marie Penn his executors. George Marks does not wish to assume the office of executor and is desirous of taking the proper steps to formalise this.

(a) Draft the document to give effect to his wish.

(b) On the assumption that George Marks has taken the necessary steps to give effect to his wish, draft an Oath (or the document(s) appropriate to your jurisdiction) to lead a grant of representation to Marie Penn.

QUESTION 2

(a) Distinguish:

(i) a grant of administration ad colligenda bona;

(ii) a grant of administration de bonis non administratis.

(b) A probate action has been commenced challenging the validity of the will of Pedro Sanchez.

The assets of the estate include a lease, mortgaged freehold property and a farm. These assets need attention.

(i) Advise as to the procedure to be adopted to have someone appointed to attend to these assets:

(ii) List the documents to be filed:

(iii) State the functions and power of any person appointed.

QUESTION 3

- (a) In what ways may an insolvent estate be administered?
- (b) Overton Rich died leaving an estate valued at \$900,000.

His debts are:

- (i) \$1,500 owing to his grocer;
- (ii) \$600,000 being a judgment debt against him;
- (iii) \$60,000 owing for income tax;
- (iv) \$500,000 owing to the Small Business Bank Ltd. secured by a mortgage on his farm;
- (v) \$150,000 which he had borrowed from his wife, Sweets, in connection with his poultry farming business.

Funeral, testamentary and administration expenses amount to \$150,000.

Advise the creditors as to how they may proceed against the estate and as to the distribution of the assets.

QUESTION 4

John Frank died on March 1, 1988. He left a will in which he named Alfred Cutler his sole executor.

On May 21, 1990, Alfred Cutler was sentenced to 6 years imprisonment for wounding one of the beneficiaries and is at present serving his sentence. He has not applied for probate, has been hostile to the beneficiaries and has refused to tell anyone of the whereabouts of the will.

The beneficiaries are anxious to have the estate administered.

- (a) What steps may be taken to obtain a grant of

representation?

(b) What would you advise in the circumstances?

QUESTION 5

Fred Long has died leaving a will appointing Simon Charles and Bernard Baker his executors.

Simon Charles takes a grant of probate with power reserved to Bernard Baker, but dies intestate before completing the winding up of the estate.

Baker is willing and able to act.

(a) Advise as to the practice and procedure to be followed in order to complete the winding up of Fred Long's estate.

(b) Describe the contents of the documents to be used in support of the steps taken in (a) above.

QUESTION 6

In January 1991, Ann, a spinster 85 years old, dies.

She had lived as a recluse for the last 20 years on her fifteen acre country estate with her servant Jane and Jane's husband, George, who was her business and estate manager.

A fortnight before Ann's death George had written to Timothy Edwards, the family's attorney-at-law, asking him to draft a will for Ann leaving the country estate to Jane and Ann's collection of valuable paintings to Peter, Ann's only brother and next of kin. Timothy Edwards had drafted the will and sent it to George.

Two days before her death, while Ann was executing the document as her will, she said to Mary, her good friend and one of the attesting witnesses, that her brother had been persecuting her and that the soul of her father had entered one of the cats and had told her not to leave her brother any substantial part of the property.

Advise as to the validity and effects of the dispositions contained in the will.

QUESTION 7

In 1987, Albert made a will in which he appointed Gerald and Percival his executors. Albert died in 1988.

Gerald took possession of the will but about two months after Albert's death Gerald's house was broken into and the will and other articles stolen.

To date despite intensive police investigations and an offer of reward the will has not been recovered. No copy or draft of the will is available.

Percival, who is also one of the attesting witnesses, recollects the contents of the will.

- (a) What type of grant of representation may be made?
 - (b) Outline the steps to be taken to obtain the grant.
 - (c) List the documents to be filed.
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QUESTION 8

(a) "Generally costs follow the event, i.e. the losing party is ordered to pay the costs of the successful party". Parry and Clark The Law of Succession, Ninth (ed.), page 200.

Discuss in relation to costs in probate actions.

(b) What is the "executor's year" and what are the rights and obligations of an executor during this period?
