

NORMAN MANLEY LAW SCHOOL

Council of Legal Education

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1992

LAW OF SUCCESSION  
(Friday, August 14, 1992)

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

Frank Smith who died on the 5th April 1991, appointed John Brown sole executor of his will.

To date, Brown has taken no steps to apply for a grant of probate in spite of several requests to do so from Eileen Smith and Joseph Smith, the widow and son of the testator, who are the joint beneficiaries of the estate.

Brown has collected rent for one of the properties and other debts owing to the estate.

- (a) Outline the procedural steps to be taken to obtain a grant of representation in the estate.
- (b) List the documents which should be filed.

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Question 2

On the 2nd May 1992, Gloria Browne, while a patient in hospital, at the suggestion of her daughter Sarah, sent for an attorney-at-law, Rajah Lexman, to draft her will.

As a result of instructions received from Gloria in Sarah's presence, the attorney-at-law drafted the will in his handwriting. It was read over to Gloria by him and she signed it in the presence of two other patients who then signed as witnesses in her presence. Gloria signed her name as "G. Brown" instead of her usual signature

"G. Browne".

In the will she gave all her property to Sarah. Her husband, Stewart, and her two other children who visited her daily in hospital and with whom she was on amicable terms got nothing.

Gloria gave the will to Sarah after it was executed. She died on the 5th May 1992.

Stewart and the two other children have now become aware of the will and wish to challenge its validity.

Write an opinion as to the possibility of successfully challenging the validity of the will.

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### Question 3

Fred Chin made a will dated 1st April 1988, in which he appointed his wife, Sonia, sole executrix and left his entire estate to her. He died on the 30th May 1990.

Probate was granted to Sonia on the 12th December 1991, in the High/Supreme Court.

On the 30th March 1992, a will made by Fred on the 1st April 1990, is found. In this will he has revoked all previous wills, appointed Sonia his sole executrix and devised to his brother, Ben, a parcel of land which had been left in his 1988 will to Sonia. No mention is made in the 1990 will of the remainder of his estate

which consists of realty and personalty.

Fred Chin died leaving no parents or children.

- (a) Advise as to what steps should be taken in respect of the wills to ensure the proper administration of the estate.
- (b) List the documents which should be filed.

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Question 4

By his will Courtney Philp left -

- (a) pecuniary legacies - \$6,000 to Tim, \$12,000 to John and \$13,000 to Alfred;
- (b) his station wagon valued at \$60,000 to George;
- (c) a small lot of land at Rock valued at \$60,000 to Andrew;
- (d) his house at Hope Glades valued at \$600,000, on which there is an outstanding balance of \$180,000 on mortgage, to Pam;
- (e) the residue of his estate which consists of land at Mango Valley valued at \$360,000 and shares in Portia's Enterprises Ltd. valued at \$60,000 to Ronald.

Philp's total unsecured debts amount to \$780,000.

Prepare a memorandum for submission to the executor setting out how the debts should be paid, from what assets they should be paid and how the surplus, if any, should be

distributed.

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Question 5

By his will dated 4th September 1988, Ronald Fields appoints Alfred Beckford his sole executor and leaves his entire estate to his wife Gertrude and daughter Pamela.

The will, which is prepared by Fields' attorney-at-law, Simeon Baron, on Fields' instruction is duly executed in Baron's office and left in his possession.

On the 4th May 1992, Fields dies and despite Baron's diligent efforts to locate the will it cannot be found. He is, however, able to furnish the executor with a photocopy of the original.

- (a) Describe the practice and procedure to be followed to obtain the necessary grant of representation in the estate.
- (b) Draft the Oath (or document appropriate to your jurisdiction) to lead the grant of representation.

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Question 6

James Brown married Amy in 1973. In 1980 the marriage was dissolved. Shortly after, he married Mary.

A few days before he died he made a will in which he appointed

his nephew, Arthur Thomas, sole executor and gave "all my property to my wife Amy".

At the time of his death he was still married to Mary.

Both Amy Brown and Mary Brown claim to be entitled to all the testator's estate.

- (a) Advise on the procedural steps to be taken to resolve the matter and the evidence required.
  - (b) Draft the appropriate document(s) to be filed in Court to initiate proceedings.
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Question 7

Gresford St. Elmo made a will on the 2nd May 1989, in which he appointed his wife, Beverley, sole executrix.

On the 3rd January 1991, he was a passenger on board an aeroplane which crashed. He has neither been seen nor heard of since and is believed to have perished in the crash.

Beverley wishes to administer Gresford's estate. She consults you.

- (a) Set out the procedure to be adopted to obtain a grant of representation in the estate.
  - (b) List the documents to be filed.
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Question 8

Advise whether the following documents should be admitted to probate.

(a) Tad Poulle is unable to read or write. He asks Al Jones and Joe Saunders to witness his will. Al reads the will to him and he asks Al to sign it for him. Al signs his name instead of the name "Tad Poulle" at the foot of the document. Immediately below that he again signs his name as witness.

Joe, who is present, signs his name at the top of the document.

Fay Jones, who is blind, is also present and at Tad's request and with Al's assistance signs her name below Al's second signature.

(b) Tanya Singh signs her will. She then telephones John Ali and Frank Paul and asks them to witness her signature.

She sends her will by bearer to John and Frank who both know her signature. They witness the signature and return the will.

The following day John and Paul visit Tanya and in the presence of them both, Tanya says: "Thank you both for witnessing my will".

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