

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1994

LAW OF SUCCESSION

(Wednesdy, August 10, 1994)

Instructions to Students:

- (a) Time 3 1/2 hours.
- (b) Answer FIVE questions.
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

Distribution of Estates

QUESTION 1

By his will Fred Scott leaves

- 10 acres of land at Patience valued at \$120,000 to his children James and Marion as tenants in common in equal shares; (Marion predeceased Fred)
- his motor car valued at \$60,000 to Alvin;
- his house valued at \$300,000 to Jim; (there is an outstanding balance of \$90,000 owing on mortgage)
- his 15,000 shares in X&Z Co. Ltd. valued at \$30,000 to Kenrick.
- The residue of his estate including five acres of land and a truck valued at \$150,000 and \$90,000, respectively to Maud and Kenrick.

Two months after his death the testator inherits three acres of land valued at \$60,000 from his aunt.

At the date of his death the testator has unsecured debts of \$600,000.

- (a) Advise the executors as to the payment of the debts, the assets from which they should be paid and how the surplus should be distributed.
 - (b) What difference would it make to the payment of the debts if the testator died leaving unsecured debts of \$1,500,000?
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Grant de bonis non

QUESTION 2

George Silver is the sole executor named in the will of Allan De Grasse who died on July 5, 1990.

As Silver resided abroad he appointed Clive Barnes his attorney and on August 7, 1991, Barnes obtained the necessary grant of representation in De Grasse's estate which was valued at \$750,000.

Barnes died on March 1, 1992 before he had completed the administration of the estate. The value of the unadministered portion of the estate is \$250,000.

Silver now returns home and wishes to obtain a grant of representation in De Grasse's estate.

- (a) Describe the practice and procedure to be adopted to enable him to obtain the grant and list the documents to be filed.
- (b) Draft the Oath (or document(s) corresponding to an Oath) to lead the grant.

QUESTION 3

Four years ago Allan Hanna, while married to Cindy, made a will leaving all his property to Trudy. A year later, after Cindy had divorced him, he married Trudy.

He has now died and with his will is found a note which reads "Trudy is now my wife and will have everything". The note is

signed and dated a week after Allan's marriage to Trudy but there is no attestation. Cindy is still alive and Allan has no children.

- (a) How will Allan's property be distributed?
- (b) How would your answer differ if Allan had quarreled with Trudy after their marriage and in a rage he had torn up the will declaring that all his property was to pass to Cindy?
- (c) How would your answers differ if Allan had a son with Cindy during their marriage and a daughter with Trudy while he was married to Cindy and these children are 6 years and 5 years old respectively?

QUESTION 4

Diego Lopez executed a will dated July 20, 1988, in which he made a number of gifts, including a devise of two lots of land at Maracas Bay to his sister Maria, a bequest of all his household effects and furniture to his daughter Eliza, and a sum of \$5,000 from his savings account with the Peoples Security Bank to his friend Pedro.

Lopez died recently and the following alterations were found in the will -

- (i) one lot of land at Maracas Bay instead of two lots is now devised to Maria. The change was made by erasing the word "two" and writing in its place "one". (Scientific

- assistance was necessary to decipher the change);
- (ii) the household effects are now bequeathed to the testator's widow, Isabella. This change was made by a piece of paper on which the words "my wife Isabella" are written being pasted over the words "my daughter Eliza";
 - (iii) the sum of \$2,000 is now bequeathed to Pedro. This change was made by a line being drawn through the figures "\$5,000" and the figures "\$2,000" being written immediately above.

None of the changes are executed by the testator or attested by the witnesses.

You have been retained by Arthur Banks, one of the executors and the residuary beneficiary named in the will, to apply for probate.

Advise whether the will may be admitted to probate and, if so, how the gifts mentioned above should be distributed.

QUESTION 5

Draft a will which would be appropriate for Trevor Willman based on the following particulars:

- (i) He is aged 45, blind, married and has three children aged 20, 15 and 10.
- (ii) The proceeds of his life insurance policies are payable to his estate.

- (iii) He has shares in his credit union of which he has nominated Norman his beneficiary.
- (iv) One of his children, aged 15, is mentally retarded and Willman is particularly concerned as to how best to provide for him.
- (v) Willman owns and operated a printery.
- (vi) He owns a house and would like to give it to his wife for life only.
- (vii) He would like his residuary estate to be sold and the proceeds held in trust for the benefit of his family.
- (viii) His assets amount to \$3,000,000 and his liabilities are \$500,000 including a mortgage on the house.

QUESTION 6

Grant ad litem

On July 10, 1993, Adrian Glasgow was severely injured in a motor vehicle accident which was caused by the negligence of Felix Jones. Jones died in the accident leaving a will appointing Martha Roberts his sole executor.

Glasgow wishes to commence an action for negligence against Jones' estate. However, Roberts has so far refused to apply for a grant of probate.

Glasgow would now like to have the appropriate grant of representation made so as to enable him to commence proceedings

against Jones' estate.

- (a) Outline the steps to be taken to obtain the relevant grant.
 - (b) List the documents which should be filed in support.
 - (c) Draft the Oath (or appropriate document(s) corresponding to an Oath) to lead the grant.
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QUESTION 7

Karl Jeffers who died on June 16, 1993, by his will appointed David Maraj and Sita Gokool as his executors.

On December 2, 1993, Gokool obtained probate of Jeffers' will with power reserved for Maraj to apply at a later date. She is now anxious to cite Maraj with a view to clearing off Maraj's right to apply.

- (a) Advise as to the steps to be taken to achieve this objective.
 - (b) Assume that Maraj having been cited wishes to apply for the relevant grant.
Advise as to the steps to be taken by him.
 - (c) In respect of the steps to be taken at (b) above, draft the Oath (or appropriate document(s) corresponding to an Oath) to lead the grant.
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QUESTION 8

On March 23, 1994, Stephen Singh obtained a grant of probate of the will of Thomas Sharp. Eight days later Singh discovered that the testator's surname had been incorrectly spelt as "Shapiro" in the grant.

- (a) Outline the practice and procedure to be followed and describe the contents of the documents to be used to enable Singh to commence administration of Sharp's estate.
 - (b) To what extent would the practice and procedure and the contents of the documents differ if it is discovered that the testator's surname was spelt "Sharpe" instead of "Sharp" in the grant of probate?
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