

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1998

LAW OF SUCCESSION

(Thursday, August 13, 1998)

Instructions to Students:

- (a) Time: 3½ hours
- (b) Answer FIVE questions
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In 1997, Agatha Silvers who was eighty-five years old and suffered from Parkinson's disease, experienced such a decline in her physical health she was unable to care for herself. Silvers has also developed the habit of speaking to herself and insists that evil spirits are persecuting her.

In November 1997, fearing that the end is near, Silvers' daughter, Brenda, takes her mother to live with her and refuses to allow Cheryl, Silvers' only other child, to visit with Silvers, claiming that Cheryl's visits would only upset her mother.

The Will was executed by Silvers in the presence of Brenda and attested to by two employees of Brenda.

Cheryl has recently learnt of the existence of this alleged Will and wishes to challenge its validity.

Write an opinion as to the prospects of Cheryl successfully challenging the validity of the Will.

QUESTION 2

Jonathan migrated to England in 1980 and died in 1997 leaving property in England and in his native Caribbean country. Probate has been granted in England to Trevor and Clive, the deceased's executors whose permanent residence is in England.

The executors now wish to take steps to administer the property, valued at \$3,000,000 left by the testator in his native country.

Advise the executors as to the steps to be taken to accomplish the executors' objectives and list the documents to be prepared and filed.

QUESTION 3

Nathaniel Brown executed his Will on December 29, 1988. He died on March 9, 1994, leaving an estate valued at \$5,000,000. The sole executor under the Will is James Crown.

- (i) List the documents to be filed in support of the application for the grant of representation and,
 - (ii) Draft the Oath (or other appropriate document, if the question is being answered by reference to the law of a territory where an Oath is not required).
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QUESTION 4

By his Will dated June 5, 1997, Warren Dickson appointed Carmen Barrow of 53 Eastdale Drive as his executrix.

Dickson's Will was prepared by his lawyer, Jesse Callistus, and duly executed at Callistus' Chambers at 15 Equity Lane, General City. Dickson left the original Will with his lawyer for safekeeping and took the signed copies.

On March 15, 1998, Dickson died, leaving an estate valued at \$850,000.

A week prior to Dickson's death the lawyer's chambers was razed by fire. Dickson's Will was destroyed in the fire. Michael, Dickson's son and the principal beneficiary of his estate, comes to your Chambers, bringing with him the signed copies of his father's will.

- (i) Detail the practice and procedure necessary to obtain leave to apply for the relevant grant of representation of Dickson's estate;
 - (ii) Draft the Oath (or Affidavit in those jurisdictions in which an Oath is not used) to lead the grant of representation.
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QUESTION 5

On June 6, 1990, Alfred a widower of 5 Coconut Drive, Pleasant Pastures, made a Will appointing George Mason as his sole executor and left all his property to his only child Janet who resided with him.

On May 12, 1994, Alfred made a second Will, containing no revocation clause or reference to the first Will, in which he appointed Ian Darlington his sole executor and left five acres of land to Janet with the remainder to his cousin Joyce, Alfred's only other living relative.

Later in 1994, Alfred told a friend what he had done and said "I think I ought to have left everything to my daughter, Janet, after all".

On March 12, 1996, Alfred died. Both Wills were found amongst Alfred's personal papers in a safe in his study. However, the 1994 Will was found with the signature of the testator torn off.

- (i) What documents, if any, will be admitted to probate and who will be entitled to Alfred's estate;
 - (ii) Draft the Oath (or Affidavit) to lead to the relevant grant of representation of Alfred's estate.
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QUESTION 6

By her Will Deborah left -

- (a) her Lexus motor car valued at \$4,000,000 to Risto;
- (b) her penthouse valued at \$10,000,000 to Andrew;
- (c) pecuniary legacies (\$50,000 to Yvonne; \$100,000 to Inez and \$75,000 to Michael);
- (d) her apartment (valued at \$3,000,000) to Charmaine. There is an outstanding mortgage thereon of \$1,500,000 to the Lend Them Mortgage Bank Limited;
- (e) the residue of her estate consisting of undeveloped land valued at \$500,000 and shares in Mellow Music Limited valued at \$150,000.

Deborah left unsecured debts of \$9,500,000.

Advise the executors how the debts should be paid, the assets from which they should be paid and how the surplus, if any, ought to be distributed.

QUESTION 7

Phillip Smith died on April 24, 1996, leaving Cheryl-Lynn his common law wife of eight years. He was married to Jennifer for fifteen years but the marriage ended in divorce in 1992. Phillip has three adult children (Sam, David and Hilary) with his ex-wife. He also left a two-year old daughter, Francine, born to Cheryl-Lynn.

Phillip died intestate leaving a bank account with \$1,000,000 personal chattels valued at \$500,000 and real estate worth \$3,000,000.

Jennifer consults you and maintains that she is entitled to everything having given her "best years" to the deceased.

Advise her as to who is/are entitled to the estate and the extent of the share.

QUESTION 8

- (a) In what circumstances, or at what stage of the proceedings, would it be advisable or prudent for a litigant to lodge a caveat in a contentious probate matter.

Give reasons for your answer.

- (b) Probate is about to be granted regarding a Will your client contends is a forgery.

Draft a caveat to be lodged in the registry to prevent the grant being issued.
