

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1989

LAW OF SUCCESSION

(Thursday, June 1, 1989)

Instructions to Students

- a) Time: 3½ 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

Joan dies leaving an estate valued at \$300,000. Her debts are:

- (i) \$55,000 which she had borrowed from her husband Jerry to refurbish her boutique;
- (ii) \$200,000 owing to the Peoples Mortgage Bank Limited secured by a mortgage on a small apartment;
- (iii) \$1,000 owing to her grocer;
- (iv) \$500 wages owing to a clerk in her boutique;
- (v) \$20,000 owing to Miscellaneous Accessories Limited for goods supplied to her boutique;
- (iv) \$200,000 being a judgment debt against her.

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

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QUESTION 2

Zackie Jones died on the 1st May 1988 leaving a Will in which he named Tom Phillips and Sam Williams his executors. The beneficiaries are Prudence Jones, his widow, Faith Jones, his daughter and Allan Jones one of his two sons. Probate of the Will was granted to the executors on the 4th January 1989.

Prodigo Jones, the only other child of the testator, has now become aware of the grant of probate and from enquiries he has made he is convinced that the Will is a forgery and wishes to challenge its validity.

Advise him and indicate any procedural steps which may be taken down to the stage where the validity of the Will is finally determined by the Court.

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QUESTION 3

Tom died on the 1st January 1989 leaving:

- (i) a truck valued at \$100,000 which he used in his haulage business;
- (ii) two tractors, each valued at \$75,000, which he used in his farming;
- (iii) 105 acres of land valued at \$500,000;
- (iv) personal chattels valued at \$75,000.

He left no Will.

Surviving him are his wife Gwen, from whom he has been separated for ten years, two sons, Jim aged 35, and Albert aged 30, a grand-son Philip aged 8, who is the son of Tom's third son Felix who died before him in 1987 at age 25, his dear friend Dolly with whom he had lived and co-habited for upward of six years prior to his death, and Sean aged 5, his son by Dolly.

Advise:

- (a) as to who are the beneficiaries of Tom's estate;
  - (b) who may apply for a grant of representation in the estate;
  - (c) how the assets should be distributed among the beneficiaries.
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QUESTION 4

Allan migrated to England many years ago and recently died leaving property in England and in his native Caribbean country. Probate has been granted to Joe and Percy, his executors who live permanently in England, by a court of competent jurisdiction in England.

The executors now wish to take steps to administer the property left by the testator in his native country.

Advise as to the steps to be taken to accomplish the executors' objective and list any documents which will have to be prepared and filed.

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QUESTION 5

George Williams duly executed his Will on the 1st April 1982. He died on the 5th January 1983 leaving personal property valued at \$150,000 and real property valued at \$750,000. The executors named in the Will are Arthur Smith and Bruce Thomas.

- (a) List the documents to be filed in support of the application for the grant of representation.
  - (b) 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 6

(a) What are the presumptions where a Will cannot be found after the death of the testator and it was

- (i) last known to be in the possession of the testator;
- (ii) last known to be in the possession of another person?

(b) What is the presumption where a Will is found after the death of the testator in a mutilated condition?

(c) On the 3rd June 1986 Althea executed her Will in duplicate. She kept one and her attorney-at-law, Keith, kept the other. Althea died on the 2nd January 1988 and extensive search by the executors has failed to locate the one which was in Althea's possession.

The executors have consulted you and have sought your advice in connection with administering the estate.

Advise them.

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QUESTION 7

(a) Explain the nature of the following and state in what circumstances each is made:

- (i) a grant of administration ad litem;
- (ii) a grant of administration pendente lite; and
- (iii) a grant of administration ad colligenda bona.

(b) A probate action has been filed challenging the validity of a Will. The action is not likely to be heard for another two years. In the meantime

there are assets of the estate to be collected and safeguarded and bills to be paid.

Advise as to what may be done to protect the estate and list the documents to be filed.

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QUESTION 8

- (a) Outline the statutory requirements as to the execution of Wills.
- (b) Matilda Willis is unable to read or write. She asks her neighbour Tom Jones and her nephew Joe Brown, who lives at her home, to be the witnesses of her Will.

Tom Jones reads the Will to her and she asks him to sign it for her. He signs his name instead of the name "Matilda Willis" and then signs his name again as an attesting witness.

Joe Brown, who is also present, refuses to sign as a witness saying that the document has not been properly signed. He leaves and goes to work.

The following day before Joe Brown leaves for work Matilda Willis tells him that she is feeling very ill and asks him to sign it as a witness stating that she would prefer to die leaving a spoilt Will than no Will. Joe Brown reluctantly signs his name to the document below the second signature made by Tom Jones. Tom Jones is not present when this takes place.

The document has no date or attestation clause.

Can the Will be admitted to probate on the death of Matilda Willis?

Give reasons.

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