

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS , 1990

LAW OF SUCCESSION
(Friday, June 1, 1990)

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.

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QUESTION 1

Tom Smith is married with four children. He is blind. He has consulted you to advise him and draft his Will. He wishes, as far as possible, to benefit his wife and children equally.

A son, John, aged 19, is a spendthrift. Another, Norman, aged 14, is retarded. He had given, the third, Franklyn, aged 22 \$40,000 six months ago to start a business. His daughter, Andrea, aged 25, works as a nurse in the United States of America.

His assets are as follows:

- i) the matrimonial home valued at \$500,000 on which there is an outstanding mortgage of \$50,000;
- ii) 20 acres of land owned as tenant in common in equal shares with his brother Amos Smith;
- iii) a joint account in the sum of \$60,000 in the names of himself and his sister Veronica Smith in the National Investments Bank Ltd;
- iv) \$55,000 on fixed deposit in the Security Bank Ltd;
- v) shares worth \$25,000 in the Peoples Credit Union in respect of which his wife, Ivy, is nominee;
- vi) an insurance policy valued at \$100,000 the proceeds of which are payable to his estate.

Draft a Will which you think would be suitable for giving effect to Tom Smith's wish.

QUESTION 2

In August 1980 Frank Fisher, a native of your country, migrated to another Commonwealth Caribbean jurisdiction where he died on the 10th April, 1990 leaving a will.

He left a sizeable estate in the other Commonwealth Caribbean jurisdiction and in your country.

His executors who are resident in the other jurisdiction wish to proceed with the administration of his estate.

Describe the practice and procedure to be followed by the executors to enable them to administer the estate in your country and list the documents to be filed.

QUESTION 3

By her will dated 3rd January, 1990 Catherine Cole of 10 Paradise Avenue, Seatown, appointed Peter Palmer of 11 Moonshine Drive, Pinewood, as the sole executor and sole beneficiary of her estate which at the time of her death consisted of realty valued at \$450,000 and personalty of \$123,000.

The will was prepared and retained by her attorney-at-law, Simon Samuel, at his office. However, on the 15th April, 1990, a week prior to Cole's death, a fire of unknown origin razed Samuel's office completely destroying the will and copies.

- (a) On the assumption that there is not likely to be any opposition to the grant of representation, advise the executor as to the procedure and practice to be adopted in order to obtain the necessary grant;
- (b) draft the Oath (or other appropriate document if the question is being answered by reference to the law of a territory where no Oath is required) to read the grant of representation.

QUESTION 4

John White died on the 1st July, 1989, He left no will. He is survived by a son Samuel, aged 40, a daughter Ethline, aged 35, grandson Hugh, aged 10 who is the son of Jacob, John's first son who died in 1968 at age 41. Another son, Paul, died in a motor vehicle accident on the 1st June, 1989 at age 32 leaving a wife Sally who was pregnant at the time of his death and gave birth to a daughter, Ayisha, on the 1st August, 1989.

Jacob, Samuel, Ethline and Paul are the children of John by his wife Millicent, who died in 1986 in the United States of America where she had been living and working for several years.

John had been living and cohabiting with Eugenie Younger from 1980 till the time of his death and a son, Oldson, aged 4, the product of this relationship survived him.

John's mother, Wilhelmina, also survived him.

John left a dwelling house valued at \$500,000 a farm valued at \$450,000, a tractor valued at \$90,000, livestock valued at \$120,000, cash in the bank \$141,000 and miscellaneous furniture and other chattels valued at \$75,000.

Write an opinion as to -

- (a) the devolution of John's estate;
- (b) who may apply for a grant of representation.

QUESTION 5

(a) List and discuss the ways in which a will may be revoked.

(b) In 1986 Pam Reid and Sonny Tait her brother purchased a 20 acre farm at Crop Pen as tenants in common in equal shares.

Pam made a will in April 1988 disposing of inter alia "my half share in the farm at Crop Pen to my youngest brother Willy Tait who continues to do well in his accountancy studies at University".

Sonny Tait died in March 1989, intestate, leaving a widow and two children.

In April 1989 Willy discontinued his accountancy studies and entered the field of interior decorating much to the disappointment of Pam.

In May 1989 Pam executed another will the second clause of which reads: "As Sonny Tait died without making a will I now have charge over his portion of land. I therefore revoke all previous wills and give the whole farm at Crop Pen to my cousin Matthew Tait, accountant. My brother Willy must be content with the rest of my estate".

Advise as to which of the documents, if any, may be admitted to probate.

QUESTION 6

Paul Maharaj and Barbara Brown are the executors of the will of Arthur St. Rose who died on the 18th April, 1988, a widower. The will is dated 12th December, 1983 and probate was granted on the 15th October, 1988 in the High/Supreme Court.

The beneficiaries under the will are Barbara Brown and Beulah White, legitimate daughters of the deceased.

Ian St. Rose, a legitimate son of the deceased and his only other child is of the view that the will is a forgery and is supported in this view by a handwriting expert. He desires to have proceedings taken to have the will pronounced against and letters of administration granted to him.

- (a) Outline the steps to be taken by the parties down to judgment.
- (b) What would be the entitlement of the respective parties to the proceedings to costs out of the estate?

QUESTION 7

- (a) Explain and illustrate the meaning of "marshalling".
- (b) James left several pecuniary legacies by his will and then left "to each of my three children one of my houses at Mond and one-third of my shares in Bay Street Investors Ltd."

He left the residue of his estate to his wife. This includes a house at Plymouth in which he was living at the time of his death, shares in various companies other than Bay Street Investors Ltd. and personal chattels.

At his death all four houses and some of the shares in the companies other than Bay Street Investors Ltd. are mortgaged to the bank. His estate is solvent.

Advise the executors as to the order in which they should resort to to the assets to pay the debts and pecuniary legacies.

QUESTION 8

(a) What restrictions and conditions, if any, are imposed by the law on the purchase by a personal representative of the assets of the estate?

(b) Paul Bell, the executor of the estate of Joe Brown, is desirous of purchasing some shares which form part of the estate and the beneficiaries are agreeable.

Advise him as to how he should proceed.
