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LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1991

LAW OF SUCCESSION

(Wednesday May 22, 1991)

Instructions to students

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

Draft an appropriate will for Fay Young who wishes to have her assets distributed fairly among her relatives.

Her circumstances are as follows:

- (a) she is a widow;
- (b) she has five children - Patsy, Patrick, Vivian, Sean and Simone;
- (c) her father, Everal Green, aged 85, lives with her;
- (d) Susie Green, her sister and only other relative, a spinster, has lived with her since her husband died five years ago and helps her with the children;
- (e) Sean, aged 25, a bachelor, is a spendthrift;
- (f) Simone, aged 12, is mentally retarded;
- (g) Vivian is a medical doctor;
- (h) Patrick, an engineer, and Patsy, a nurse, both live and work in New York.

Her assets are as follows:

- (i) a five-bedroom freehold house where she lives, valued at \$950,000;
- (ii) \$400,000 on fixed deposit in the Inner Trader Bank Ltd.;
- (iii) a three-bedroom house as joint tenant with Sean, which is leased, valued at \$600,000 subject to a \$350,000 mortgage;
- (iv) an insurance policy valued at \$300,000 the proceeds of which are payable to her estate;

- (v) shares representing \$75,000 in the Small Business Credit Union in respect of which Vivian is nominee;
- (vi) 80% of the shares valued at \$800,000 in a small garment manufacturing company, Reggae Fashions Ltd. The remainder of the shares is owned by Patrick and Patsy equally.

QUESTION 2

Frederick Henry died leaving the following will which was written by Thomas Straw, who is also one of the attesting witnesses:

- " 1. This is the last will of me Frederick Henry.
2. I revoke all wills ~~and testamentary instruments~~ heretofore by me made.
3. I appoint my son and heir Pastor ^{Shane} Junior Henry my executors.
4. I give my dwelling house to my daughter ^{Nora} ~~Cutie~~ Henry.
5. The rest of my estate to Frederick, Paul and Jerry. ~~and~~

his

Frederick X Henry

mark

Witness: Thomas Straw

Gersham Ellis.

"

When the will was handed to the attorney-at-law to make an application for probate it had rust marks from a paper clip, a staple had been fastened to it and a hole had been punched in it to secure it to a file.

Draft:

- (a) an affidavit of attesting (subscribing) witness;
 - (b) an affidavit of plight and condition.
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QUESTION 3

Amos Willis, a widower, died intestate on March 20, 1990. He left surviving him:

- (i) Tatlyn Evans, a single woman with whom he had lived and cohabited for 7 years immediately preceding his death;
- (ii) Junior, aged 3, a son by Tatlyn;
- (iii) Arthur, aged 18, a son by his wife, Ivy, who died 9 years before him;
- (iv) Paul, aged 8, a grandson who is the son of his daughter Avis who died before him;
- (v) Theophilus, his father.

He left personalty valued \$500,000 and realty valued \$700,000.

- (a) Advise as to how the assets should be distributed.
 - (b) Would your advice be different, and if so in what respect, if Amos was not a widower at the time of his death but himself and his wife, Ivy, had been living separate and apart for 10 years before his death, but in all other respects the above facts remained the same?
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QUESTION 4

Suliman Hassan died leaving the following assets:

(a) Freehold house	\$250,000
(b) Farm	200,000
(c) Lot at Arima	100,000
(d) Lot at Belmo	75,000
(e) Cash	40,000
(f) Jewellery	7,000
(g) Furniture	<u>25,000</u>
	<u>\$697,000</u>

By his will he made the following bequests:

- (i) to Al \$25,000;
- (ii) to Bill \$12,000;
- (iii) to Cleve his furniture and jewellery;
- (iv) to David his freehold house;
- (v) the lot at Arima to be sold and the money applied for payment of his debts;
- (vi) the lot at Belmo to Eric subject to payment of his debts;
- (vii) half the residue of his estate to Frank.

His unsecured debts amount to \$110,000.

Advise the executors as to the payment of the testator's debts, the assets from which they should be paid and the distribution of the surplus.

QUESTION 5

AT, aged 85, who had been seriously ill for several months, died in hospital 2 days after undergoing surgery. He left a will dated the day before he died.

The executors are AE and BE.

BT and CT, the testator's sons, who would have taken substantially more on intestacy than they take under the will, are of the opinion based on evidence in their possession, that AT lacked testamentary capacity at the date of the will.

They wish to challenge the will.

(a) Advise as to the procedure to be adopted and assuming that the matter is contested list the steps to be taken and the documents to be filed.

(b) In what way, if any, would the procedure be different if probate had already been granted and BT and CT wished to challenge the will?

QUESTION 6

Edith Frank, a native of your country, is named as the sole executrix and principal beneficiary of Richard George's will.

However, at the date of George's death in May 1989 Frank was resident in another Commonwealth Caribbean country and is reluctant to return to your country to administer the testator's estate which is located there.

She wishes her uncle, Russell Smith, who resides in your

country, to make the necessary application on her behalf.

Describe:

- (a) the grant to be made and the procedural steps to be followed to enable him to administer George's estate on behalf of Frank;
- (b) the contents of the documents to be used in support of the steps taken in (a) above.

QUESTION 7

In 1983 Karla made a will leaving her entire estate to her son John.

In 1989, after an argument with John, Karla telephoned her attorney-at-law stating that she wished to make a new will leaving everything to the Poinsettia Home for the Handicapped.

Karla's attorney-at-law drafted a new will in accordance with these instructions and it was arranged that Karla attend at his office to execute the will which was to be witnessed by a secretary and a clerk.

Before leaving her home for the attorney's office Karla tore up the 1983 will and threw it into the back of her writing desk saying to her housekeeper "As my will of 1983 is to be revoked, I may as well destroy it".

When Karla arrived at the attorney's office he was engaged with another client and Karla was taken into the secretary's office to execute the will. The clerk was also present. The secretary said to Karla "I am expecting a telephone call so I had better

attest now", whereupon she signed her name to the will.

While Karla was in the middle of signing her name the telephone rang and the secretary left the room to answer it in an adjacent office which was separated by a glass partition. Karla completed her signature and the clerk also signed. The clerk then left the room.

When the secretary returned, Karla pointed to her signature and said "What a pity that the telephone had interrupted the signing." The secretary then said, "There is no problem I had already signed my name".

Karla has recently died and John wishes to be advised as to which document, if any, can be admitted to probate.

Advise him.

QUESTION 8

In January 1988, Captain Gilbey and a crew of five went to sea in a small fishing boat.

While at sea there was a storm and the boat became disabled and started drifting. Three members of the crew jumped overboard and were eventually rescued by a passing ship.

Gilbey and the other members of the crew remained on board. They have neither been seen nor heard of since and are believed to have perished at sea.

Gilbey had made a will in 1987 in which he appointed his brother Charles his sole executor.

Charles now wishes to administer Gilbey's estate.

- (a) Describe the procedural steps to be taken to enable him to obtain a grant of representation.
- (b) List the documents to be filed.
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