

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1992

LAW OF SUCCESSION
(Tuesday, May 19, 1992)

Instructions to Students

- a) Time: 3 1/2 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

Paul Spender died leaving the following assets -

- | | |
|-----------------------------------|-------------|
| (a) car | \$ 150,000 |
| (b) dwelling-house | \$1,000,000 |
| (c) cash | \$ 250,000 |
| (d) miscellaneous personal estate | \$ 100,000. |

His liabilities are -

- | | |
|--------------------------------|-------------|
| (a) judgment debt | \$ 750,000 |
| (b) loan from his father | \$ 25,000 |
| (c) income tax | \$ 250,000 |
| (d) wages for his secretary | \$ 15,000 |
| (e) grocery bill | \$ 1,000 |
| (f) garage bill | \$ 30,000 |
| (g) mortgage on dwelling-house | \$ 700,000. |

Funeral, testamentary and administration expenses are \$150,000.

The executors have obtained probate.

Advise them as to how they may proceed to administer the estate and indicate how the assets should be distributed.

QUESTION 2

Tim Purchas, one of the executors of the estate of Sam Gopaul, wishes to purchase part of the assets of the estate consisting of a 75-acre farm, part of which was leased to him by the deceased for cultivating flowers for export.

Outline the conditions to be fulfilled and the procedure to be

adopted, citing any relevant provisions or cases, to enable Tim to acquire the farm.

QUESTION 3

Jane Love died in 1938 leaving a will in which she appointed her daughter, Pam, sole executrix and left her a dwelling-house.

Jane's husband, Don, destroyed the will after her death and eventually applied for and obtained a grant of letters of administration in her estate. Thereafter he executed an assent for the dwelling-house in his favour.

The dwelling-house is occupied by Pam and her husband and Don has now demanded possession of it.

Pam now has evidence that Don destroyed Jane's will. She does not have a copy of the will but knows one of the witnesses to the will and another person who knows the contents of the will from memory.

She consults you.

(a) Describe the procedural steps which you would take to protect her interest and to obtain a grant of probate in Jane Love's estate.

(b) Indicate the nature of the evidence which would be necessary and the standard of proof required.

(c) List the documents which should be filed.

QUESTION 4

By his will made in 1970, Terrence, a father of three children, appointed Agnes and Bernard as his executors and gave ten acres of land to two of his children, Mildred and Michael as joint tenants. The will, which contained no revocation clause, was left in the custody of Terrence's attorney-at-law.

In 1980, Terrence, apparently believing that he had mislaid his will executed another will on a standard will form containing a revocation clause. In this will he appointed Bernard and Yolande as his executors and gave the ten acres of land to his three children, Mildred, Michael and Martha as tenants in common and left \$500 in cash to his friend Thomas.

In 1990, Terrence visited his attorney-at-law and on his advice duly executed a codicil to the 1970 will appointing Petra and Peter his executors and giving \$800 to Keith but otherwise confirming the 1970 will. The attorney-at-law was not told anything about the 1980 will and only learnt about it when Terrence died in October 1991.

(a) What document(s), if any, will be admitted to probate? Give reasons.

(b) Draft the Oath (or the document appropriate to your jurisdiction) to lead the grant of representation in Terrence's estate.

QUESTION 5

(a) Distinguish between a secret trust and a document incorporated by reference into a will.

(b) John Midas, by his will, left a legacy to the Council of Legal Education and directed that the income be used for the award of scholarships and prizes for the Norasa Wooding Law School. The will states that the gift "is conditional on the School complying with any memorandum found with my papers written or signed by me relating thereto".

After Midas died an unattested document signed by him was found with his papers setting out certain conditions and stating that unless the School was prepared to accept the bequest on such conditions the legacy would be void.

Advise as to the validity and effect of the legacy.

QUESTION 6

Tom Simpson died leaving the following will -

" 2/1/90 .This is the first^{and last} will and testament of me Tom Simpson of Rest, Tranquility P.O. St. George.

I appoint Alvin Allen my executor and give to my daughter

Miss ^{Dorcas} ~~Darckie~~-Simpson my dwelling house at Hope and my farm

at Berry/^{Hill} and the money in my ~~XXXXXXXXXX~~ account at

Dunkirk Bank. Everything else to Peter.

Dated the 3rd January 1990

his

Tom X Simpson

mark

William Shephard

- witness

Methuselah Rambarran - witness "

The alterations in the will were made prior to its execution.

When the will was found after the testator's death on the 25th December 1991 a part of the document had been eaten by rats but the words were not affected.

Alvin Allen has consulted you to apply for probate.

After he left the will at your office your new secretary Fingeries Medley wrote in ink at the top left of the page-"Will left by Boogsie Allen". Alvin Allen is also known as "Boogsie Allen".

Prepare the appropriate affidavit(s) dealing with the execution of, amendments to and condition of the will to be filed with the documents in support of an application for a grant of probate.

QUESTION 7

(a) Stuart Goddard made a will containing the following clause:

" I give, devise and bequeath to all my four children, Alfred, Andrew, Philip and Lane as tenants in common in equal shares my property situated at Mocho together with all furniture and furnishings contained therein. "

Andrew predeceased the testator but is survived by his son, Percival, who is alive at the time of the death of the testator.

Advise the executor as to how he should dispose of the above gift.

(b) John Bethel died in January 1992, intestate, predeceased by his parents, his wife, and two sons by his wife - Cyril, the older, and Gerald. He is survived by his daughter, Patsy, who was not a child of his marriage, and her mother, Petrona.

Gerald is survived by his wife Amy and their son Fred, aged 22, who were alive at the time of John's death.

Cyril who had no children is survived by his wife Jillian who was alive at the time of John's death.

Patsy is aged 7.

John and Petrona had lived together for eight years after the death of John's wife, and up to the time of his death.

John died leaving realty and personalty.

Advise as to how John's estate should be distributed.

QUESTION 8

On June 8, 1991, Joseph Gransaul died leaving a will appointing Cecil Jonas as his sole executor and leaving his entire estate to his wife and three children.

On May 5, 1992, two months after obtaining a grant of probate Jonas discovered the following -

(a) a deed of conveyance for one acre of land immediately adjoining the testator's family residence. This property which was purchased by Gransaul in 1986 is valued at \$300,000.

(b) a deed of conveyance for five acres of land in Canada.

This property was also purchased by the testator in 1986 and is valued at \$350,000.

- (c) a life insurance policy taken out by Gransaul on his life in which he names his mistress, Josephine, as the beneficiary.

Advise the executor as to the steps to be taken in relation to the above matters.