

NORMAN MANLEY LAW SCHOOL

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MONA, KINGSTON, J. JAMAICA

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1993

LAW OF SUCCESSION

(Tuesday, May 18, 1993)

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

Viola Wallace, who is unable to read and write, makes a one-page will leaving all her property to her niece Joan and appointing Tim Johnson and Peter Jaffers as executors.

She asks Johnson and Jaffers to be the witnesses of the will. At Wallace's request Johnson signs the will for her. He signs his name instead of the name "Viola Wallace" and then signs his name again as attesting witness.

While Johnson is signing his name as witness Jaffers turns his back and goes to a corner of the room to answer the telephone. He returns a few minutes later and signs his name at the top of the page in the presence of Wallace and Johnson.

Joan who is also present, at Wallace's request, signs her name immediately below Johnson's signature.

The document has no date or attestation clause.

Wallace dies and the executors wish to be advised as to the admissibility of the will to probate.

Advise them.

QUESTION 2

Marcus Smith died intestate on the 1st January 1993. He left surviving him Miriam from whom he was divorced in 1986 and their children Fay and Rohan, aged 22 and 20 respectively. Also surviving him were Diana, with whom he had been cohabiting since 1986, their child Wayne, born February 1989 and Smith's brother, Carlos, born 1968. The estate is valued at \$500,000.

- (i) Who is entitled to a grant of representation?
 - (ii) Who is likely to obtain a grant?
 - (iii) What are the procedural steps for obtaining a grant?
 - (iv) How should the estate be distributed?
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QUESTION 3

Joe Fields dies on the 15th May 1992 leaving a will in which he names Gary Ewing his sole executor.

On the 12th June 1992 Ewing is sentenced to five years' imprisonment for fraudulent conversation and is at present serving his sentence. He has not applied for probate and is hostile to the beneficiaries.

The beneficiaries are anxious to have the estate administered and come to you for advice.

- (i) Advise them as to the steps which may be taken to obtain a grant of representation.
 - (ii) What would you advise in the circumstances?
 - (iii) Based on your answer to (ii) above draft the Oath (or appropriate document if an Oath is not used in your jurisdiction) to lead the grant.
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QUESTION 4

A probate action concerning the validity of the will of Sheila Davidson, deceased, was commenced on the 30th April 1993.

The assets of the estate include a hardware business, a lease and a farm with growing crops. The assets are in need of attention.

Davidson's widower, Brian, wishes to be advised as to the type of grant which should be made in the circumstances and the procedure to be followed to obtain same.

- (i) Advise him.
- (ii) List the documents to be used in support of the application for the grant.
- (iii) Draft the Oath (or appropriate document if an Oath is not used in your jurisdiction) to lead the grant.

QUESTION 5

Ishmael Aliman died in January 1993. By his will he -

- (a) devised his dwelling-house, "Poinciana Grove", to his daughter Francine. The house is valued at \$360,000. It is mortgaged to W.I. Bank Limited to secure a debt of \$230,000;
- (b) bequeathed \$30,000 each to John and Peter;
- (c) devised three acres of land at Stony Hall valued at \$80,000 to his son Paul. Paul died in June 1992. He is survived by a fifteen year old son, Saul, who is still alive;

- (d) bequeathed shares worth \$30,000 in the Antilles Company Limited to Ronald "subject to the payment of all my debts";
- (e) devised two acres of land at Pirate's Cove to his friend, Joshua, in exercise of a general power of appointment. The land is valued at \$30,000;
- (f) gave the residue of his estate consisting of five acres of land valued at \$100,000 and \$50,000 cash in the bank to Benjamin. Benjamin died in December 1992.
- Aliman owed debts totalling \$250,000 in addition to the mortgage debt.

Advise the executor as to how the debts should be borne as between the persons entitled to share in the estate and as to how the surplus assets, if any, should be distributed.

QUESTION 6

William Byles, the personal representative of the estate of Gerald Faulkner, deceased, is interested in purchasing a twenty-acre farm, part of the estate, from the beneficiaries who are willing to sell.

- (i) What constraints, if any, are placed on such dealings?
- (ii) How should the personal representative proceed with a view to purchasing the farm?

QUESTION 7

Advise, giving reasons, whether the following documents should be admitted to probate-

(a) By his will dated 5th October 1985 John Reynolds, deceased, leaves his entire estate to charity, completely disinheriting his only child, Charlotte, to whom he had an unnatural aversion.

Reynolds' wife, Marlene, had died while giving birth to Charlotte and Reynolds hated Charlotte. He thought she was the devil and had even refused to see her for the first three years of her life.

Apart from this he was otherwise capable of managing his personal and business affairs.

(b) Ralph Theodore makes a will in 1970. In 1975 he decides to make another will and instructs his secretary to draw a line across each of the three pages. After this is done he writes the word "Revoked" across each page.

An hour later he tears up the will saying at the same time to his secretary "I might as well finish the job properly as I am to see my lawyer next week about making a new will."

Theodore dies suddenly, two days later, before executing a new will.

It is discovered that Theodore's house keeper has thrown away the torn up will and that his lawyer has destroyed all copies in anticipation of his visit.

QUESTION 8

Michelle Brown, aged 85 years, who was seriously ill for several months, dies in hospital two days after undergoing surgery. She leaves a will dated the day before she dies.

The executors and beneficiaries under the will are Alex Byron and Andrew Chester with whom Brown had become acquainted a few months prior to her death.

Brown's sons, Oscar and Felix, are of the opinion, based on evidence in their possession, that their mother lacked testamentary capacity at the date of the will.

They wish to challenge the validity of the will.

Advise them of the various procedures which may be adopted by them to do so. List and describe briefly the documents to be used.
