

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1994

LAW OF SUCCESSION

(Thursday, May 26, 1994)

Instructions to Students

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

---

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Ian Careful and Fred Ready, the executors of the estate of John Dyer, deceased, retained Tom Laws, attorney-at-law, to obtain a grant of probate of Dyer's will.

Laws cannot find the original will, which had been left in his custody, to proceed to apply for probate. It is believed that the will was stolen when his office was burgled.

The executors, however, have a photocopy of the will.

The estate is valued at \$600,000.

On the assumption that there is not likely to be any opposition to the grant of representation in this matter -

- (i) prepare in draft an application to have the copy will admitted to probate;
  - (ii) list the documents to be filed to obtain a grant of probate.
- 

QUESTION 2

Ivan Carol and Frank Rance, the executors of the estate of Joseph Dunn, deceased, retained Tim Lewis, attorney-at-law, to obtain a grant of probate of Dunn's will.

Lewis cannot find the original will, which had been left in his custody, to proceed to apply for probate. It is believed that the will was stolen when his office was burgled.

The executors, however, have a photocopy of the will in which Dunn's paramour and two of his friends are beneficiaries. The estate is valued at \$600,000.

A caveat has been lodged in the Registry of the Supreme/High Court in the estate on behalf of Fiona Dunn, widow of the deceased, and Sam and Sonia, his children, by Packer Punch, their attorney-at-law, who has also written to Tim Lewis indicating the intention of his clients to oppose a grant of probate on the ground that the will is a forgery.

- (a) On the assumption that the matter is likely to be contentious, outline the procedure to be followed to obtain a grant of probate and list the documents to be filed.
- (b) Draft the appropriate document to be filed in court to initiate proceedings to have the validity of the will determined.

---

### QUESTION 3

Alton Blake, who was domiciled in your territory, died on May 5, 1988, in Ontario, Canada, where he was residing temporarily. He was buried in Canada and is described in his death certificate as "Al Blake". He left property only in your territory.

He left a will dated April 4, 1985. In his will he named his son, Clive, sole executor and gave all his property to be

divided equally between his children, Clive, Doris and Roy, all adults. Personalty is valued at \$200,000 and realty at \$750,000.

Clive died intestate on July 8, 1988, without obtaining a grant of probate in his father's estate. Letters of Administration in Clive's estate were granted to his widow, Andrea, on January 31, 1992. Clive had no children.

- (a) Who is/are entitled to a grant of representation in Alton Blake's estate? Give reasons.
  - (b) List the steps to be taken and the documents to be filed to obtain a grant of representation.
  - (c) Draft the Oath (or document(s) corresponding to an Oath in your jurisdiction) to lead the grant of representation.
- 

#### QUESTION 4

In September 1993, Joshua Peters, 75 years old, and Agatha Myers, 81 years old, obtained a grant of probate of Cyril Victor's estate. By his will Victor bequeathed \$150,000 to his daughter, Mary, and the residue of his estate to his nephew, John.

Three months after obtaining the grant, Peters became senile and Myers developed arteriosclerosis and they are unable to carry on the duties of executors adequately.

Mary and John are anxious to have the administration of Victor's estate completed and wish to be advised as to the steps to be taken in this regard.

- (a) Advise them as to the steps which must first be taken to enable the appropriate grant of representation to be made.
- (b) List the documents relevant to the grant of representation.
- (c) Draft the Oath (or documents(s) corresponding to an Oath in your jurisdiction) to lead the grant of representation.

---

*Receivable*

QUESTION 5

On January 12, 1994, Kenneth Marsh, a native of your country, died domiciled in another Commonwealth Caribbean country, leaving property both in the other country and your country.

By his will Marsh appointed his 14 year old son, Roy, as his sole executor and principal beneficiary, but leaves his estate whatsoever and wheresoever situate, not previously disposed of, to his aunt Matilda.

On March 8, 1994, the relevant grant of representation of Marsh's estate in the other country was obtained.

- (a) Advise as to the steps to be taken to enable Marsh's estate in his native country to be administered as quickly as possible.
- (b) List the documents to be lodged in respect of the steps taken and describe the contents of the documents.

It is to be assumed that the practice and procedure in respect of grants of representation in the other Commonwealth Caribbean country is similar to that in your country.

---

QUESTION 6

*Insolvency*

Jerome Richards died on March 1, 1993, leaving a will appointing Carol Mohammed as his executrix and leaving his entire estate to his children.

His estate includes a house valued at \$300,000 which is mortgaged to Ibis Mortgage Company to secure a debt of \$200,000, of which \$150,000 is still due and owing at the date of Richards' death.

Soon after obtaining probate of Richards' will, Mohammed discovers that Richards had accumulated unsecured debts of \$900,000 while his assets, excluding the mortgaged property, are \$580,000.

- (a) Outline the various ways in which the estate may be administered.
  - (b) Advise as to the order in which the testator's debts must be paid and as to liability, if any, for failure to pay them in that order.
-

QUESTION 7*will*

Sandra Barrow recently died leaving a two-page will signed by her at the end of the second page and by the witnesses at the top of the first page.

A number of changes have been made to the will which is burnt at the edges. A gift of \$15,000 to Barrow's daughter, Paula, is inked out. This change is initialled by the testatrix and the witnesses. A line is drawn through a gift of \$10,000 to Barrow's niece, Charlotte, and the figure of \$7,500 is written immediately above. This change is initialled by the witnesses.

The will was witnessed by Charlotte, and by Theodore Braxton who is unable to read and write, in the presence of Rosalind Jenkins who is blind and who at the testatrix's request and with Charlotte's assistance, had signed her name immediately below Barrow's signature on the second page.

Advise whether the will may be admitted to probate and, if so, how the gifts mentioned above should be distributed.

QUESTION 8*Gifts*

In 1970 Alex Ferguson made a will appointing Richard Aquilino and Simon Harrell his executors and leaving the following gifts -

- (a) my lands at Richplains and the house which I now occupy at Pleasant Pastures to the wife of my cousin, Felix, and to the St. Michael's Home for the Aged in equal shares;

(b) my lands at Green Gables I devise and give to my children as joint tenants;

(c) my shares in the Hummingbird Construction Company to my wife Patricia and children in equal shares.

In 1980 Ferguson executed a codicil to his will leaving \$5,000 to his friend Cleo and appointing an additional executor.

Ferguson and his wife, Patricia, recently died in an aeroplane crash and to date their bodies have not been recovered.

At the date of Ferguson's death the following were discovered -

- (i) the St. Michael's Home for the Aged was closed in 1973;
- (ii) In 1978 Ferguson subdivided Pleasant Pastures and built an office complex on the land and leased it to a bank and other commercial enterprises;
- (iii) In 1973 Felix's wife died and three years later Felix married Marilyn.

Advise as to the construction and eventual distribution of the above dispositions.

---