

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1995

LAW OF SUCCESSION

(Thursday, May 25, 1995)

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.

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QUESTION 1

Louis Alphonse, a trader, dies leaving an estate consisting of personalty valued at \$100,000 and realty valued at \$1,000,000.

He leaves the following debts -

- (i) \$50,000 owing for rent;
- (ii) \$400,000 owing to National Merchandise Ltd. for goods purchased for his business;
- (iii) \$700,000 owing to the Shylock Trust Co. Ltd. secured by a mortgage on his real estate;
- (iv) \$180,000 being taxes due to the Government;
- (v) \$50,000 owing to his father for money borrowed to invest in his business;
- (vi) \$25,000 owing to his wife for money borrowed to invest in his business.

His funeral expenses amount to \$15,000.

- (a) Advise as to the methods of administering Alphonse's estate.
- (b) Advise as to the order in which the debts should be paid.

QUESTION 2

You are consulted by Irene Sabdul who hands you a clipping from the death column of a local newspaper which reads as follows -

"

DEATH

SABDUL; Joseph Ishmael (affectionately known as Boogsie) late of Sabina Gully, Queen's Park, died April 4, 1995, leaving dear friend Agatha Ramos (Puncie), ex-wife Irene, sons Thomas,

Alfred and Rajah, daughters Fay and Jennifer, father and mother Daniel and Olga. Funeral service to be announced. May his soul rest in peace."

She informs you that Joseph Ishmael Sabdul died intestate and that she had been divorced from him in April 1993 after they had lived separately and apart for over seven years. He had lived with Agatha Ramos since 1938 and Rajah, born in 1990, is the issue of that union. The other children are the children of the marriage between Joseph and herself. Thomas is the oldest and they are all adults.

The deceased left personal chattels valued at \$10,000, other personalty valued at \$200,000 and realty valued at \$750,000.

- (a) Advise Mrs. Sabdul as to who is/are entitled to share in or make a claim against the estate and the extent of such entitlement.
- (b) Draft the Oath (or document(s) corresponding to an Oath) to lead the grant of representation.

QUESTION 3

Paul Mair died on December 1, 1993, leaving a will dated January 2, 1990, in which he named his wife Jane his executrix. The beneficiaries are Jane and the children of the marriage, Lisa and Quamin.

On May 27, 1994, Jane obtained a grant of probate in common form of Paul's will.

Sam Lawman, attorney-at-law, has become aware of the grant and writes to Jane informing her that on August 10, 1993, her husband had executed a will prepared by him. He states that the will was signed by the deceased at his chambers and witnessed by his two secretaries and that the file with the original and a copy of the will cannot be found but that one of the secretaries recollects the contents of the will. The executor is Allan Wolfe, Paul's business partner, and the beneficiaries are Wolfe, Jane, Lisa and Quamin.

Jane replies to Lawman denying knowledge of the alleged will and maintaining that the will of January 2, 1990, is the only valid will.

Advise Wolfe as to the steps to be taken in order to have the Court pronounce for the validity of the will of August 10, 1993.

QUESTION 4

A probate action has commenced challenging the validity of the will of Jane Tyson, deceased, and is not likely to be heard for another two years.

The assets of the estate, which include mortgaged land, a lease, animals and growing crops in the country, need attention.

- (a) Outline the procedure to be adopted to have someone formally appointed to attend to the assets.
- (b) State the functions and powers of the person appointed.

- (c) Outline the procedure if the above assets needed attention but nobody had applied for a grant of representation and the validity of the will was not being challenged.
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QUESTION 5

Faith Daniels, a patient in the Golden Agers Home, had a will drafted for her on one page. She called Ivy Paul, a nurse at the Home, and her friend Frank Gilman and said to them "Nurse Paul I want you to sign my will on my behalf and I want you both to witness it for me".

Nurse Paul thereupon wrote "Nurse Paul" at the foot of the page and signed her full name at the back of the page. Frank began signing his name at the top of the page but was unable to complete his signature as he collapsed due to illness. Faith then asked John King who was sitting on a bed nearby to witness the will. John, who was deaf and unable to read and write, agreed and thereupon made his mark at the back of the page.

The document was read over to Faith Daniels by Nurse Paul before it was signed but it had no date nor attestation clause.

After the will was executed certain changes were made -

- (i) a line was drawn through a gift of \$20,000 to Sonia, the daughter of the testatrix (Sonia has married John King since the will was executed);

- (ii) a gift of \$15,000 to Albert was excised from the will (this also resulted in a portion of Paul's signature at the back of the will being cut out).
- (a) Advise whether the will may be admitted to probate.
- (b) If it is admissible to probate, how should the abovementioned gifts be distributed?
-

QUESTION 6

Matthew Lawrence has recently died leaving a home-made will dated November 23, 1989. The will contains the following dispositions -

- (i) to my three children my house on Thomas Street in equal shares;
- (ii) to my nephew, Rawle, my house at Penso Street where I reside at present;
- (iii) to the St. Mary's Home for the Destitute the sum of \$130,000;
- (iv) all my money to my children Karla and Suzette jointly.

At the date of the testator's death in April 1995, the following facts were revealed -

- (a) Suzette, one of the testator's three children, died in 1994 but left surviving her a daughter, Margaret, who is still alive;

- (b) the testator owned three houses on Thomas Street;
- (c) apart from cash in the bank, the testator also owns stocks and shares valued at \$60,000;
- (d) three years before his death the testator sold his house at Penso Street and purchased another on the same street where he lived until his death;
- (e) the St. Mary's Home for the Destitute was forced to close down in 1994 due to financial difficulties.

How should the dispositions be distributed?

QUESTION 7

Travis Mann, who owned substantial property in your territory and in Canada, died in January 1992 in Canada where he had lived for over thirty years.

He left a will in Canada. The executors, who live in Canada, have proved the will there but have just become aware of the property in your country which was not mentioned specifically in the will.

- (a) Outline the procedure which should be adopted to enable the property in your territory to be administered.
 - (b) List the documents to be used in the process and describe the contents of such documents.
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QUESTION 8

Dev Maraj, a 65 year old blind businessman, instructs you to draft his will.

He is the father of two children Joseph, 23 years old, and Carla, 12 years old, and the husband of Maria from whom he is separated. He wishes as far as possible to benefit his two children equally and to have his estate administered by his sister, Josephine.

His assets are as follows -

- (i) the matrimonial home valued at \$2,000,000 on which there is an outstanding mortgage of \$500,000;
- (ii) two life insurance policies with Hummingbird Life Insurance Co. Ltd. valued at \$100,000 and \$250,000, the proceeds of which are payable to his estate and to Maria respectively;
- (iii) \$40,000 in credit union shares for which he has nominated Joseph as beneficiary;
- (iv) a joint account in the sum of \$160,000 in the names of his sister Josephine and himself in the National Savings Bank;
- (v) 25 acres of agricultural land valued at \$1,500,000.

Draft a will to give effect to Maraj's wishes.
