

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**SECOND YEAR EXAMINATIONS, 1996**

**LAW OF SUCCESSION**

**(Monday May 20 1996)**

**Instructions to Students**

- (a) Time 3½ hours.
- (b) Answer FIVE questions
- (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 territory.
- (d) It is unnecessary to transcribe the questions you attempt.

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**QUESTION 1**

Theodore Titus died in March 1996, leaving Doris Freebie his common law wife of twelve years. He was married to Suzette for twenty years but this marriage was dissolved after a bitter divorce battle, with the granting of the Decree Absolute in July 1991. Theodore left adult sons Frank, Tom and Jerry (the product of his "failed" marriage) and daughters Alice and Cinderella both minors born during his "union" with Doris. Further, Doris gave birth to Theodore, Jnr., unquestionably the deceased's son in April 1996.

Theodore died intestate leaving real estate valued at \$3,400,000, personal chattels valued at \$1,800,000 and two bank accounts with a total of \$2,000,000.

You are consulted by Mrs. Suzette Titus who claims that she is entitled to everything as, *inter alia*, she had sacrificed her life for the deceased.

- (i) Advise her as to who is/are entitled to a share of the estate and the extent of that share. Cite the relevant legislation and the case law which support your advice.
  - (ii) Draft the Oath (or other document(s) corresponding to an Oath) to lead the grant of representation.
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**QUESTION 2**

Kool Dogg was a true cosmopolitan who travelled the globe acquiring property all over the Caribbean and Europe. His life came to an abrupt end when he suffered a massive stroke.

He left huge estates in your territory, in England and in New York, United States of America. He also left a will in England dealing with his entire estate. The executors in England have proved the will there and wish to administer the property in your territory. The beneficiaries of property in New York also wish to administer the property in your territory.

- (i) Advise who is likely to administer the property in your territory stating the reason(s) for your advice.
- (ii) Outline the procedure to be pursued to enable the property in your territory to be administered.
- (iii) List the documents to be filed and state the purpose of ~~the~~ each.

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**QUESTION 3**

By her will dated June 21, 1989, Mary J. Bright made the following gifts -

- (a) her motor car valued at \$1,000,000 to John;
- (b) her shares in Bigshot Limited to Sam (these are valued at \$5,000,000);
- (c) the acres of land at Jonkanoo (valued at \$5,000,000) to her adult children James, Tiffany, Fred and Lorna;

- (d) her house valued at \$3,000,000 to Delroy (there is a mortgage balance of \$850,000); and
- (e) the residue of her estate (including a motor cycle valued at \$60,000 and ten acres of real property valued at \$1,000,000) to her associates, Junior and Carol, respectively.

Mary also directed her executors to sell her land at Bugsville (valued at \$1,000,000) and to apply the proceeds of sale to pay all her just debts, funeral and testamentary expenses.

At the date of her death Mary left unsecured debts of \$6,750,000.

Advise the executors as to the payment of the debts, the assets from which they should be paid and how the surplus should be distributed.

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#### QUESTION 4

- (a) State the instances in which a gift will fail.
- (b) What is meant by the following -
  - (i) a latent ambiguity;
  - (ii) the "armchair" principle; and
  - (iii) *falsa demonstratio non nocet cum de corpore constat*.

(c) R. Grant died in 1991 in a train crash having made a will dated September 11, 1981, in which he appointed two executors and made the following gifts -

- "
- (i) my blue 1,600 cc Bentley motor car I give to my son Jack;
  - (ii) my Kenwood component set I give to my friend Marlene;
  - (iii) my house known as "Citeview" I devise to my favourite doberman "Comeyah"; if he predeceases me then I devise the said house to my brother Baggioso; and
  - (iv) all the rest and residue of my estate to my beloved wife Cherie."

At R. Grant's death it was discovered that -

- (i) he had the Bentley motor car but he had upgraded it to 2,000 cc and changed the colour <sup>to</sup> red;
- (ii) Marlene had migrated and cannot be located;
- (iii) "Comeyah" predeceased R. Grant and Baggioso, who was one year older than the testator, also died in the same train crash; and
- (iv) the Testator's wife, who was two years younger than her husband, predeceased the testator.

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

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**QUESTION 5**

On July 4, 1989, Fred Red, a citizen of your country, was a passenger on a "daredevil" flight over the Bermuda triangle. The aircraft disappeared and this was the subject of numerous articles in the media. to date neither the aircraft nor any of its crew or passengers has been seen since the disappearance.

Fred left a will naming his sole adult child, Pearlina, as executrix. He also left his entire estate valued at \$3,000,000 to her. Pearlina wishes to apply for a grant of representation in her missing father's estate.

- (a) Draft the affidavit in support of the preliminary application which is necessary before she can apply for a grant of representation.
  - (b) Pearlina having succeeded with the application mentioned in (a) above, list the documents to be filed in support of the application for the grant of representation.
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**QUESTION 6**

- (a) state the difference(s), if any, between a personal representative and a trustee.
- (b) State the difference(s), if any, between an administrator and an executor.
- (c) Who is an "executor de son tort" and in what circumstances will he be held liable to the estate of the deceased?
- (d) State what is meant by "chain of representation" and the circumstances in which the chain is broken.

(e) Ella, Elan and Simone are the executrices named in the will of Lawrence of Normalia, deceased. They are very anxious to administer Lawrence's estate and want to be advised of their duties/obligations, powers and rights prior to, and after, a grant of probate to them.

Advise accordingly.

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**QUESTION 7**

(a) Explain briefly the nature of the following and state in what circumstances each is made -

- (i) double probate;
- (ii) a grant of administration de bonis non administratis;
- (iii) a grant of administration pendente lite; and
- (iv) a grant of administration ad colligenda bona.

<sup>(b)</sup>  
(a) A bitter probate action currently dominates the news in your territory. The multi-billionaire Dante Good died leaving a will in which he gave everything to his two daughters Shawna and Sophia. The deceased's two sons Pierre and Delroy are challenging the validity of the will. The action is not likely to be heard before another four years. In the interim, however, the assets of the estate are to be amassed and secured and the bills are to be paid.

Advise as to what may be done to protect the estate and list the documents to be filed.

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**QUESTION 8**

- (a) State briefly the statutory requirement(s) for the following -
- (i) the execution and amendment of a will; and
  - (ii) the revocation of a will.
- (b) Fred made his will (signing as "the last of the great poets") on a cold and windy afternoon when he was alone and feeling depress. He saw Carl (who is 16 years old) and Winston the next day and asked them to witness a document, stating that it was his will. While Carl was signing Winston (who is reputedly insane ) ran off because a carnival parade was passing and he wanted to see the revellers, especially the dancehall "models" who were special guests. He returned the next day and signed the will before Carl with whom Fred had left the will. Winston, having been "touched" by the carnival spirit, did not sign his name but instead signed as ~~the~~ "Stonie the Chanter".

Fred had made changes to several gifts in the will before he had signed, crossing out the original names written and substituting other (new ) names. These amendments have not been signed nor initialled. The will was not dated neither is there any attestation clause.

Advise the executors on the several issues.