

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 2000

LAW OF SUCCESSION

(Tuesday, May 23, 2000)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

Question 1

In 1990, prior to leaving to work in Canada, Phillip Munroe made a Will, leaving all his property to his parents. In 1992, whilst working in Canada, he met and married Sylvia. In 1993, they both returned to your country and later that year Phillip wrote on the back of his Will words confirming his will and the following additional words, "My estate is now to be divided in equal shares between my sister, Anna, and my parents". He initialled the end of this paragraph in the presence of his friend, Trevor, whereupon Trevor signed his name to the document.

The next day Phillip asked Trevor and Joanne to visit him. Producing the Will, he pointed to what he had written at the back and said to Joanne, "I think you had better witness this as well". Phillip then turned to Trevor who nodded in agreement and Joanne added her signature to the top of the Will.

Phillip has recently died and Sylvia wishes to be advised as to the validity of her husband's Will.

Advise her.

Question 2

The testator Xavier died in 1999 having made several Wills. Xavier had married Yolande in 1995. Yolande was a widow with two children. There were no children of her marriage to Xavier. By his first Will (1996) Yolande was the sole executrix and beneficiary. By the second Will (1997) Xavier gave Yolande an

income during her widowhood and bequeathed the residue of his estate to his sister Annette. By his third Will (1998) Xavier made Y his sole executrix and bequeathed his estate to her absolutely.

On his death a fourth Will (1999) was found in which Xavier had reverted to the provisions of the second Will (1997). Xavier was liable to drinking bouts, which made him mentally disturbed and physically exhausted. He died of illnesses caused by his alcoholism. During his drinking bouts he suffered from delusions. In the intervals between the drinking bouts he was active, intelligent, and transacted business with every appearance of reason and acumen. He developed, however, an intermittent distrust of and antagonism to his wife and referred to incidents far removed from reality.

The executors of the last Will (1999) brought an action against Yolande claiming probate of the 1999 Will in solemn form. Yolande has sought your advice on the defence available, if any, and would like to make a counterclaim to have the third Will (1998) probated in solemn form. The third Will (1998) had been drawn up by the testator's attorney-at-law after the testator had been released from hospital following a drinking bout from which he had fully recovered. The last Will (1999) had been drawn up by the same attorney-at-law on the testator's instructions which were contained in a letter which was written clearly and intelligently and did not appear irrational except where the testator expressed his suspicions and distrust of his wife. The attorney-at-law has advised that at the time of execution of the last Will (1999) the testator appeared perfectly normal and rational.

Advise Yolande on the issues which arise and on the defence, if any, which can be made to the action against her by the executors of the 1999 Will.

Question 3

On February 6, 2000, Paul and Penny Lowell, husband and wife, died in a car crash.

By her Will dated October 5, 1995, Penny made the following dispositions:

- (a) \$30,000 to my sister.

There is a line drawn through the figure and \$25,000 has been written above in ink. Penny is survived by two sisters;

- (b) my 200 shares in Caribbean Gas Company to my dear friend Devon.

Although Penny's original shareholding in the company was exactly 200 shares, at the date of her Will Penny owned 2000 shares due to the capitalization of Caribbean Gas Company's shares;

- (c) my house Belle Vue together with furniture and effects to my husband Paul;
- (d) the residue of my estate to my only daughter Marlene and my sister Celine.

Marlene died three months before her mother but is survived by her son, Roger.

Write an opinion as to the construction and effect of the dispositions contained in Penny's Will.

Question 4

By his Will dated January 5, 1998, Ralph Valdez appointed Salma Brighton, then 16 years old, and Henry Clarkson 35 years, as the executors of his Will.

On November 30, 1998, Valdez dies and on February 15, 1999, Clarkson obtains the relevant grant of representation of Valdez's estate; the estate is valued at \$1, 500,000.

Brighton of 53 Seaview Gardens has recently celebrated her eighteenth birthday and would like to obtain a grant of representation of Valdez's estate.

- (a) Advise Brighton as to the type of grant for which she may apply and the documents and procedure relevant thereto ;
 - (b) Draft the Oath/ Affidavit to lead the grant.
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Question 5

On November 23, 1999, Frank Hosten, a retired banker, of 363 Bay View Gardens, died intestate, leaving an estate valued at \$3,600,000.

Hosten is survived by Jacqueline Brown with whom he lived in a common law union for the fourteen years preceding his death.

Hosten was married to Joan for twenty-five years but the marriage was dissolved in April 1996. Four children were born to the marriage; David, 24, Michelle, 22, Winston, 20 and Denise, 16 years, respectively. The children all reside with their mother at the family home at 85 Windsor Park. Hosten also left a son, Sam, who was born to Jacqueline on December 28, 1999.

At the time of his death, Hosten was living in a jurisdiction which has family inheritance provision legislation.

- (a) Advise as to:
 - (i) the distribution of Hosten's estate; and
 - (ii) the persons entitled to apply for the relevant grant of representation of his estate.

 - (b) Draft the Oath (or the equivalent document) to lead the grant of representation of Hosten's estate.
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Question 6

Advise each of the following:

- (a) Fred, who is the executor of Catherine's estate. He is ready to distribute the estate but he is concerned that he may not know of all the claims against the estate.

- (b) Hannah, who is the executrix of David's estate. She obtains a grant of probate of David's estate and is in the process of

distributing the estate when she discovers that a freehold property valued at \$2,500,000 was inadvertently omitted in the application for the grant.

- (c) Eric, who is the executor and also residuary beneficiary of Derek's estate by Derek's Will. Derek has recently died and Eric who had agreed to be Derek's executor prior to the execution of the Will in 1992, no longer wishes to act and would like to know what steps he may take with respect thereto.
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Question 7

Advise on the persons entitled to a grant of representation in the following cases, the type of grant which is appropriate, and the documents to be filed:

- (a) Abe Lincoln left a duly executed Will in which his wife Hannah is the sole beneficiary. He has appointed his daughter, Jane as the sole executrix. Jane is away at university in London and Hannah wants to obtain a grant of probate.

Advise her.

- (b) Mary died and left a Will leaving her whole estate to Drane and appointing Lee as the sole executor. Lee obtained a grant of probate but died immediately afterwards. Lee left a Will appointing Lee Paul as his executor and Paul is now applying for a grant to Lee's estate. Drane is in dire need of money, has received nothing from Mary's estate and wants to know what to do.

Advise Drane.

- (c) Joe Fox left a Will prepared by an inexperienced attorney-at-law. The Will did not provide for the appointment of an executor. The Will had been duly executed, witnessed and dated. Joe Fox is survived by his wife and three children.

Advise Joe's wife on what can be done.

- (d) Abby Gayle died leaving her estate to her two children. She appointed her brother Simon as her executor. Simon is at present detained at a mental hospital for the murder of his wife. Simon has been diagnosed as mentally deranged and psychotic. Abby Gayle's two children, both adults have sought your advice.

Advise them.

Question 8

On June 1, 1998, Godfrey Jones, 63 years and a widower, of 89 Fullerton Avenue, Pass Valley dies leaving a Will dated May 8, 1995. His entire estate valued at \$2,800,000 is left to his only child, Cheryl of 73 Ashland Avenue, Brighton.

John Peters, the sole executor of Jones' Will, has collected and secured the assets but has refused to apply for probate, stating that Cheryl is well off, so "why the indecent haste". On February 12, 2000, Cheryl consults you and informs you that she is anxious to have Peters administer her father's estate.

However, she says that in the event that Peters refuses to apply for probate, she is quite willing to apply for the relevant grant of representation.

- (a) Advise Cheryl as to the steps she may take to compel Peters to act or for her to replace him.
 - (b) On the assumption that Peters refuses to act, draft the Oath or other equivalent document that Cheryl would file to lead the relevant grant of representation of Jones' estate.
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