

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND-YEAR EXAMINATIONS, 2001

LAW OF SUCCESSION

(TUESDAY, MAY 22, 2001)

Instructions to Students

- (a) Time: 3 ½ 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 relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

**QUESTION 1**

Edward Bentley migrated to England in 1992 and established a great reputation as a restaurateur. In 1997 he died in England leaving property, real and personal, in England, the United States of America and in his native Caribbean country. Probate was obtained in England by Thomas and Shawn, the deceased's executors whose permanent residence is in England.

The property left in the United States is valued at United States One Million Dollars (US\$1,000,000). The property left by the deceased in his native country is valued at Five Million Dollars (\$5,000,000).

Advise the executors as to the steps to be taken to administer the estate. List the documents to be prepared and filed.

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**QUESTION 2**

Jane Matthews died on June 8, 2000, leaving an estate valued at Four Million Dollars (\$4,000,000). She also left a Will dated August 23, 1990, appointing Cleo Bonita as her executrix.

Jane's Will was prepared by her lawyer, F. Ever Quick, and duly executed and attested. Quick kept the original Will at Jane's request but gave a photocopy of same to her.

Quick migrated after a freak flood destroyed his office in 1999.

After Jane's death Venus, her daughter and the principal beneficiary of her estate, visits your chambers with the photocopy of Jane's Will.

- (a) State the practice and procedure necessary for the estate to be wound up.
- (b) Detail the contents of the main affidavit relevant to any preliminary application to be made.

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**QUESTION 3**

By her Will dated March 4, 2000, Marian left:

- (i) Shares in Mari-Me Limited valued at \$50,000 to Frank;
- (ii) Land at Salt Grove valued at \$1,000,000 to Risto;
- (iii) A BMW motor car valued at \$2,000,000 to Yvonne;
- (iv) A condominium (valued at \$4,000,000) to Michael. [There is an outstanding mortgage of \$2,000,000 registered on the title to We Lend Building Society];
- (v) Insurance policy proceeds of \$1,500,000 to pay her debts. [Earl and Betty, Marian's brother and sister respectively, are the named beneficiaries on the insurance contract];
- (vi) Pecuniary legacies (\$100,000 to Jermaine, \$50,000 to Leonardo and \$50,000 to Rhonda); and

(vii) The residue of her estate to her friend, Osiris.

The residue of her estate consists of land at Boomville valued at \$3,000,000 and bank accounts with total balances of \$2,000,000.

She also left unsecured debts of \$7,000,000.

Advise the executors how the debts should be paid, the assets from which they should be paid and how the surplus, if any, ought to be distributed.

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#### QUESTION 4

Julio Gomez, a bachelor and famous singer, mysteriously disappeared during a tour of Africa in 1993. Despite countless searches neither Julio nor his manager, Carlos, with whom he was last seen, can be found.

Julio, by a Will dated May 3, 1988, left his huge estate valued at millions to his sweetheart, Rosa Petal. His executors were Rio and Santos. Rosa wants the estate to be wound up.

- (a) State the practice and procedure necessary for the executors to obtain a grant of probate.
- (b) Detail the contents of the principal affidavit relevant to any preliminary application that ought to be made.

- (c) Assuming that the above-mentioned preliminary application is successful, list the documents to be filed in order to lead the grant.
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### QUESTION 5

Solomon Jones died in 1999 leaving an estate valued at \$5,000,000. A probate action was commenced challenging the validity of the Will allegedly made by Solomon in 1997. The case is unlikely to be heard soon.

Solomon's estate (which included a fully occupied tenement yard, with rent-paying tenants, a farm with various types of animals and crops and mortgaged real property) is in need of urgent attention.

- (a) Outline the practice and procedure to be adopted to have someone appointed by the courts to manage the assets.
- (b) How, if at all, would the practice and procedure in (a) above be different if the estate needed attention but there was no law suit, and no one had applied for a grant of representation?
- (c) Distinguish between a "*de bonis non*" grant and a grant of "double probate".
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**QUESTION 6**

In January 1997, Anthony Brown made a Will which provided as follows:

- (i) To my Muslim friend, David, my house in Brown's Town;
- (ii) To my "old lady" my shares in Well Fix Limited;
- (iii) To my son, Trevor, and my brother, Dennis, my apartment at Marlboro, as joint tenants;
- (iv) \$1,000,000 to be divided equally between the Brain Dead Foundation and the Strong Heart Home for the aged;
- (v) To Lady Bashie all my jewellery;
- (vi) To "Chrome" all my cash; and
- (vii) To my son, Roberto, my red Infinity motor car.

After Brown's death in 2000 it is discovered that:

- (a) His friend's name is Donald not David.
- (b) He called both his girlfriend, Ishtah, and his mother "old lady".
- (c) His son, Trevor, predeceased him but left a daughter, Stephanie, who was alive when Brown died.
- (d) He called both his friends, Simone and Jerome, "Chrome".

- (e) He had signed an agreement to sell the apartment at Marlboro but the transfer has not yet been effected.
- (f) No one knows who he called "Lady Bashie".
- (g) He has only a purple and white Infinity motor car.

Advise the executors on the construction of the Will and how the estate should be distributed.

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#### QUESTION 7

Donovan made a Will in 1996 leaving his estate to be divided equally among his six daughters and his wife, Jessica.

Upon discovering that his wife had been unfaithful to him he decided to make a new Will. He crossed out her name with his ballpoint pen and left it on his desk. Jessica saw the Will and hid it.

Donovan quickly made a new Will and asked his butler and Gary, a visiting friend, to sign as witnesses. He signed the Will in the presence of both men. The butler then signed at the top of the (new) three-page Will but Gary had to leave urgently and did not sign until the next day when the butler had his day off and was not present.

The new Will, which left everything to his six daughters, was given to Donovan's attorney-at-law but cannot now be found. Jessica has produced the first Will and contends that it is valid.

Advise the six daughters as to the validity of the respective instruments.

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**QUESTION 8**

William Smith died in April 1998 leaving realty valued at \$5,000,000 and personalty valued at \$3,000,000 including personal chattels valued at \$1,000,000. He left no Will. He is survived by his "girlfriend", Faye, with whom he had lived for the last 10 years and his "sweetheart", Joan, who alleges that William was her "man". He had been married to Deborah for thirty years but they were divorced in 1990.

He is also survived by the four children (Joe, Mary, Arthur and Ruth) of his marriage to Deborah, all of whom are adults. He had two children (Dawn and Oswald) with Faye, eight-year-old twins, and a five-year-old boy (Simon) with Joan.

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

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



(b) What preliminary application(s) should be pursued if any common law spouse and the children born out of wedlock are to benefit from the estate?

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