

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2008

LAW OF SUCCESSION

(MONDAY, MAY 12, 2008)

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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Dorothy Jones executed her Will on March 18, 1999, leaving her entire estate, valued at \$7,000,000 to her three adult children in equal shares. She died on April 15, 2004. The sole executrix under the Will is her best friend Pamela Baugh. The four-page Will is torn on the first and second pages but not on the signing page. There are also staple marks on the first page.

- (i) List the documents to be filed in support of the application for the grant of representation.
 - (ii) Detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.
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QUESTION 2

Trevor Brown died intestate on May 14, 2004. One of his sons, William, applied for a grant of letters of administration of his father's estate and the application was advertised in the leading local daily newspaper.

Fabian at 21 years old is the youngest of Trevor's six children, all of whom are the product of Trevor's marriage to Jessica Brown who is still alive. Fabian lives in Norway but the advertisement came to his attention. He is aware that Trevor left a Will that is in the possession of the deceased's lawyers.

Fabian contacted the lawyers who informed him that there was such a Will but that it has been missing since a hurricane hit several months after Trevor died. The lawyers, however, have a photocopy of the signed Will.

- (i) Advise Fabian as to the practice and procedure to give effect to the deceased's Will as contained in the photocopy.
 - (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.
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QUESTION 3

You are a young associate in the law firm of Obama & Obama. The senior partner asks for your opinion in relation to the following matter:

Carlton Symonette is the named executor in the Will of George Hanna, deceased. He wishes to have the Will admitted to probate. On perusal of the Will, you note the following.

- (a) In the third line, it reads, "I appoint my best friend Fred Pyfrom as executor of this my last Will and testament." The name "Fred Pyfrom" has been crossed-out and the name "Carlton Symonette" substituted. The initials "GH", "CS" and "MY" appear beside it.

Carlton's instructions are that Fred died two months after George executed his Will and so George called him and Michael Young to witness this change that he subsequently made to his Will. Carlton Symonette and Michael Young are the original attesting witnesses.

- (b) One line of the Will reads, "To my son, Carlos, the sum of \$100,000 and my car." The words "to my daughter, Carlita, the sum of \$200,000" are

inserted after the words “the sum of \$100,000” and are preceded by an asterisk.

Carlton also instructs that the testator made this change in his own handwriting before executing the Will.

- (c) Another line of the Will reads, “To my god-son, Peter,” and the words thereafter are completely obliterated. It is impossible to see with the naked eye what was written there before.

Prepare the requested opinion to your senior partner advising Carlton on the effect of each change to the Will. Give reasons for your opinion.

QUESTION 4

Thomas Whyte, a banker, was killed on October 11, 2003, after a row with one of his friends, James Smith, over a woman. James was subsequently convicted of murdering Thomas who had made a Will dated August 6, 2000, in which he had appointed James and another friend, Marcia Jetson, as his executors. The sole beneficiaries of the estate are Thomas’ three adult children, Phillip, Eve and Anthony.

Marcia had advertised for creditors and started to collect the assets of the estate but has told the beneficiaries that she cannot continue as executor because of the bad memories regarding how their father died. James Smith, although serving a life sentence for the crime, is willing to act as executor “to atone for my wrong”.

The estate has both personalty and realty amounting to a net worth of \$9,000,000. Anthony, an inveterate gambler, is in dire financial straits and wants to have the Will probated urgently.

- (i) Advise Anthony as to what grant, if any, he can get and the steps he must take to ensure that this is done.
- (ii) Assuming that Anthony is applying for the grant, detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 5

On May 1, 1990, Herman Moore made a Will which contained a clause revoking all previous Wills. By virtue of this 1990 Will, he appointed his friend Charles Thomson as executor. The 1990 Will left Herman's house and condominium to Myrna, his wife, a legacy of \$3,000,000 to the Rotary Club and the residue of his estate, including \$7,000,000 in his bank accounts, to his four adult children with Myrna.

In 2003, Herman, then seventy years old, ran off with his thirty year-old secretary, Bodacious Beulah. On July 20, 2004, he made a second Will which also contained a revocation clause. In that Will he left his house to Myrna and their said children and everything else to Beulah who was also appointed as his executrix.

In March 2005, Herman suffered a heart attack and became quite ill. Beulah abandoned him while he was in the hospital. Fearing that he would soon die, Herman wrote on a piece of paper:

“This is my Codicil to my very first Will dated May 1, 1990. I hereby revoke every other Will and Testament. I appoint my loving wife, Myrna, as executrix of my estate. In all other respects I confirm my said Will”.

The Codicil was duly executed with two of the attending nurses being the witnesses. The same nurses telephoned Myrna who went to the hospital, took Herman home and looked after him. Herman died six months ago in the arms of his wife.

Bodacious Beulah has produced the 2004 Will under which Herman appointed her executrix of his estate. She has applied for the Will to be admitted to probate. Myrna is contesting the proceedings and has produced the 1990 Will and the 2005 Codicil as the true testamentary documents.

Advise Myrna as to which document(s) should be admitted to probate and why.

QUESTION 6

Aloysius Lloyd died in 2005 leaving his entire estate to his wife, Angela. They have no children. He appointed Barry Malcolm as his sole executor. Barry was granted probate in early 2007 and started winding up the estate but died in a boating accident in late 2007 without finishing the administration of the estate.

By his Will made in 1998, Barry had appointed Miranda Bright and Samantha Henry as his executrices. Samantha was admitted to a psychiatric hospital in 2006, having been diagnosed with acute psychosis, and is not likely to leave for some time. Miranda has indicated she may apply for probate in Barry's estate but has not yet done so as she wants 'to tour the world'. She refuses to give Angela a definite answer as to when, if at all, she will apply for the grant.

Angela is strapped for resources and wants the estate wound up.

- (i) Advise Angela as to who is to complete the process of administering Aloysius' estate stating the procedural steps required.
- (ii) Assuming that Angela has to obtain a grant for her deceased husband's estate, detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 7

Kyle Rochard, a 59 year-old attorney-at-law of 56 Trueview Crescent, died on November 25, 2007. By his Will dated February 28, 2005, he left his entire estate valued at \$12,000,000 to be shared equally between his wife Rochelle and their only child Kylene. He appointed Kylene, who is 15 years old, as the sole executrix of his Will because he regarded her as "extremely smart for her tender years". Rochelle wishes to have her husband's estate administered as she needs money urgently to deal with a number of matters.

- (i) Advise Rochelle as to the type of grant to be obtained and the procedure to be adopted.

- (ii) List the documents to be filed in support of the application for the grant.
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QUESTION 8

Stephen Palmer died on October 20, 2007, at 67 years old leaving the following assets:

- i. His house at 54 Miracle Close worth \$7,000,000;
- ii. Various bank accounts worth \$4,000,000 in total;
- iii. An insurance policy worth \$3,000,000 with the listed beneficiary being "Estate"; and
- iv. A motor car valued at \$2,000,000.

Under his Will executed on June 7, 2001, Palmer made the following dispositions and directions:

- i. "I appoint my brother Lee Palmer to be the sole executor of my estate;
- ii. I give my house at 54 Miracle Close to my best friend, Lorna Howard, free of mortgage;
- iii. I give my motor car to my nephew, Philip Andrew;
- iv. I give the sum of \$2,000,000 to my sister Linda Palmer;
- v. I give the sum of \$50,000 to my loyal gardener, Manuel Costanzo; and
- vi. I give the residue of my estate to my nieces Lisa-May and Elise Gardiner in equal shares."

In addition to the above-stated assets, the residue includes personalty valued at \$1,000,000 and realty valued at \$3,000,000.

Stephen Palmer had the following debts:

- i. mortgage balance on the house at Miracle Close of \$3,000,000;
- ii. outstanding taxes of \$4,000,000;
- iii. credit card balances totaling \$1,500,000; and
- iv. funeral expenses of \$300,000.

Lisa-May pre-deceased the testator.

Advise the executor Lee Palmer as to the payment of the various debts and the distribution of the estate.
