

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2009

LAW OF SUCCESSION

(MONDAY, MAY 18, 2009)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Percy Gray made a Will on March 18, 1999, leaving his entire estate, valued at \$10,000,000, to his wife, Jessica, and his two adult children, Pamela and Anthony, in equal shares. Percy died on January 15, 2005. Trevor White, the sole executor under the Will, obtained a Grant of Probate but died intestate while he was in the process of discharging the liabilities of the estate. Jessica applied for a grant of representation to wind up Percy's estate but before it was issued to her she died in 2008 after being struck by lightning.

Pamela and Anthony come to you for advice to complete the winding-up process for their father's estate.

- (i) List the documents to be filed in support of the application for the relevant 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**

Wilbur Myers, a widower, died on May 5, 2007. He had no children and his parents predeceased him. His Will, dated January 4, 2004, contains the following clauses:

- (a) "My house at Bigrock upon trust to my executors to be sold and the proceeds used to settle my debt of \$2,000,000 to my friend Wayne. The balance is to be applied to settle any other debt that I have";

- (b) “My Honda motor car to my niece Fiona, absolutely”;
- (c) “My brothers John and Thomas are each to be given the sum of \$20,000”;
- (d) “The remainder of my property is to go to my nephew Jomo”.

The house at “Bigrock” is valued at \$5,000,000 and there is a mortgage balance of \$1,500,000; the Honda motor car is valued at \$2,000,000 and there are some items of furniture valued at \$100,000 and a parcel of land, “Nirvana” valued at \$1,000,000 that form the residue of the estate. His brother John died in a car accident on February 6, 2006 leaving several children who were living when Wilbur died.

His executors wish to know how the estate should be distributed. Advise them.

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### **QUESTION 3**

In a daring daylight bank robbery in May 2005, Marcus Cassidy, a successful banker, was killed when a stray bullet hit him. He left a Will dated June 9, 1997, appointing Thomas Kirkpatrick as his sole executor and leaving his entire net estate, valued at \$12,000,000, to his only child Socrates Cassidy.

In April 2006, Thomas went to France to study art but, prior to leaving, appointed Charlene Romero as his agent to administer the Cassidy estate. Charlene comes to you for legal advice.

- (i) Advise her as to the relevant grant of representation to be obtained and the practice and procedure necessary to complete the winding-up of the Cassidy estate.
  
  - (ii) Detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.
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#### **QUESTION 4**

Wilma James died intestate on December 19, 2007, as a result of an accident at sea. She left a net estate valued at \$8,000,000 including personalty and realty. At the time of her death she had been married for 28 years to Maurice James but the couple had been separated since 1999, with Wilma leaving the matrimonial home disenchanted with “my husband’s lack of ambition”.

In 2001, Wilma established a common law union with Fred Browne that was thriving at her death. After her death, her three children, June, Alex and Deborah, products of the marriage with Maurice, insist that the entire estate should be theirs. Both Maurice and Fred want their “deserving entitlement being the right spouse”.

Advise as to:

- (i) the distribution of the estate,
  
  - (ii) the practice and procedure to wind up the estate.
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### **QUESTION 5**

Myron Hancock migrated to England as a teenager and established a successful tailoring business. He died in April 2004, leaving an estimated net fortune of \$14,000,000 including property in England, Canada, the United States of America and your country.

His executors have obtained a grant of probate in England and now wish to take the necessary steps to administer the estate in your country valued at \$3,000,000.

Advise his executors as to the steps to be taken to achieve their objective, summarising the contents of the document(s) to be filed in support of the relevant application(s).

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### **QUESTION 6**

In August 2004, Theodore Evans, a bachelor, made a Will leaving everything to his two sisters, Dimple and Fay, and appointing Carl Proud and Stephen Mighty as his executors. Theodore died in 2006 and Carl obtained a grant of probate in 2008 with power reserved to Stephen who was 14 years old when Theodore died.

After Carl obtained the Grant, Dimple and Fay discovered that he was stealing from the estate. Carl has disappeared and cannot be found even after the police launched a manhunt for him. Stephen's parents, Peter and Alva Mighty, insist that their son must have nothing to do with the estate and intend to register a formal renunciation of his appointment as executor.

Dimple and Fay are anxious to have the estate administered and come to you for legal advice.

- (i) Assuming that they will be allowed to wind up the estate, advise as to the relevant grant to be issued and the practice and procedure to complete the estate.
- (ii) Detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.

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### **QUESTION 7**

Mavis Creary made a Will dated June 8, 2002, appointing Devon Greene and Marlon Hays as her executors and leaving her entire estate, valued at \$5,000,000, to her husband, Ezekiel, and their three children, George, Peter and Ruth.

In 2003, Mavis executed a Codicil to her 2002 Will removing Devon as executor (in her words she had discovered that he was a “wicked sinner”) and giving the sum of \$50,000 to her hairdresser, Simone Elliott. After the death of her best friend in a motor vehicle accident in March 2006, Mavis had a “spiritual awakening” and in April 2006, she made a new Will leaving most of her estate to Jehu Phillips the pastor of her church – “The Tabernacle of Divine Prophecy” – with the only other beneficiary being her church sister Rebecca Temple. This 2006 Will had no revocation clause and no other clauses.

In 2007, Mavis made a change to her 2002 Codicil, drawing a line through the name “Simone Elliott” (in her words she discovered that she was “an evil obeah worker”) and

wrote the name "Titus Jones" – her deacon - above it. She put away the Codicil without showing this change to anyone.

Ezekiel and the children believe that Mavis has been insane for some time as she had started acting strangely the day after her friend's death. After prolonged bouts of depression Mavis died in 2008.

Advise Ezekiel and the three children as to which of the documents or clauses are valid and give reasons for your answer.

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### **QUESTION 8**

Edward Roache, a widower, died peacefully in his sleep in June 2007, after a long and distinguished career as a civil servant. Several weeks after his death his son, Brutus, produced a Will dated May 11, 2007, which he allegedly found in his father's study.

On March 15, 2004, Genevieve, Edward's only other child and his confidante, had been given a Will dated February 14, 2004, by her father for safekeeping. She therefore doubts Brutus's story, believing that he had forged the 2007 document, especially as Edward had been in and out of a coma in the last few weeks leading up to his death.

Genevieve filed a probate action challenging the validity of the 2007 instrument and seeking a declaration that the 2004 Will is the true and proper one. The trial is likely to occur in 2010.

Edward's net estate, valued at just over \$4,500,000, consists mainly of a poultry farm that is in need of urgent attention. Each time Genevieve tries to deal with the estate, Brutus finds some way of obstructing her, accusing her of trying to "siphon off" the property. Brutus and Genevieve have reached, in her words, a "tense compromise" to have Amador Willow, a police superintendent and one of their father's closest friends, manage the estate until the courts determine which Will is valid.

- (i) Advise them as to the relevant practice and procedure to have Willow appointed to manage the estate.
  
  - (ii) Would your answer be different if a probate action had not been filed? If so, why?
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