

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2002

LAW OF SUCCESSION
(TUESDAY, MAY 21, 2002)

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 written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In 1993, Eunice, who was blind, executed a Will which was mainly typed but had certain parts written in ink. There was no attestation clause although Eunice had signed at the bottom of the second page of the three-page Will. Just above Eunice's signature were the signatures of the attesting witnesses Alice and Curtis, who at the time was engaged to be married to Angela, a beneficiary.

By her Will, Eunice left all her realty to Angela and provided that the personalty should be shared between friends of Eunice whose names would be found in the back of her 1992 diary.

Two years later, Eunice executed a codicil to her Will, appointing new executors and leaving her freehold premises at Fern Glades to Charles but otherwise confirming her Will. The codicil was witnessed by Curtis, who is now married to Angela, and by another person.

It is now discovered that at the time the codicil was witnessed, the signatures of the witnesses were affixed whilst Eunice was in an adjoining room. The two rooms are separated by a glass block partition.

Write a legal opinion on the admissibility to probate of the Will and codicil.

QUESTION 2

Thomas Jones died on March 9, 1998, intestate leaving four adult children, Deborah, Mary, Tabitha and Michael from his marriage to Phyllis, from whom he

was divorced in 1996. At the time of his death, Thomas Jones had lived for eight years with Jennifer in a common-law relationship.

Thomas had three children with Jennifer; Andrew, who is seven years old, Desiree, who is six years old and Gideon, who is four years old. He left real estate valued at \$6,000,000, personalty valued at \$3,000,000 (including "personal chattels" valued at \$1,000,000).

- (1) Advise Jennifer as to -
 - (a) The persons entitled to share in or make a claim against the estate and the extent of such entitlement.
 - (b) The persons entitled to apply for the relevant grant of representation.
 - (2) Describe the contents of the oath (or document corresponding to an oath) to lead the grant.
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QUESTION 3

On January 6, 2001, Ollie West made a Will with the following dispositive clauses-

- (i) To my godson my 2000 shares in ABM & Co.;
- (ii) to my daughter, Cissy, the money which I have in my account at Liability Bank;
- (iii) to my son, Beau, the lease on my townhouse;

- (iv) to my cousin, Conrad, for life and after his death to all of my other cousins the vacation house at Ridge Beach;
- (v) to my wife, A. West, any money I may have;
- (vi) to my friend, Bob, the sum of \$15,000, and
- (vii) to the Orphans Society the residue of my property.

At the date of Ollie's death the following facts are revealed -

- (i) During Ollie's lifetime ABM & Co. was acquired by XYZ & Co. and Ollie was given 1000 shares in XYZ & Co. as compensation for the shares he held in ABM & Co. Further, Ollie had two godsons.
- (ii) The account at Liability Bank was in credit in the amount of \$150,000 but was held by the bank as security for a loan.
- (iii) At the time of the Will the lease of the townhouse was about to expire. It expired in March 2001 and Ollie obtained a new lease and duly executed a codicil in June 2001 confirming the Will.
- (iv) Ollie's wife, from whom he had lived apart for the last ten years, is Agnes West. Since then he has been living with Alice Brown who is known as Alice West whom he lovingly referred to as his 'wife'.
- (v) Ollie also had the following -
 - A sum on deposit in Zero Bank.
 - A share account in a credit union.
 - Government bonds withdrawable on one month's notice.
 - A fixed deposit which could be cashed without notice.
- (vi) Ollie owed Bob the sum of \$15,000.
- (vii) There was an Orphans Society at the time Ollie made the Will but it had ceased to exist.

Advise the executor on the dispositive clauses and how Ollie's estate should be distributed.

QUESTION 4

On February 10, 1994, Travis, who was 75 years old, executed his Will in which he left \$1,000 to each of his nephews and nieces and the remainder of his estate valued at \$3M to Lolita, his girlfriend. Travis' execution of his Will was witnessed by Nurse Pam and later that day by his neighbour Gloria.

On hearing of this, Travis' three sisters took the Will and tossed it in the garbage bin. The Will was never recovered. His three sisters made Travis drunk on March 8, 1995 and had him execute another Will which their attorney-at-law had prepared. By this Will the bulk of his estate went to his nieces and nephews and a legacy of \$5,000 was given to Lolita.

In 1999, Travis took a photocopy of the 1994 Will and taped over the amounts in the clauses giving the gifts to his nieces and nephews and then copied the pages. He then inserted \$10.00 where \$1,000 was previously written. Lolita was named therein as the residuary legatee and sole executrix. He then put the unaltered and altered pages together as his last Will and numbered each page. He took this Will to his bank and executed it in front of three witnesses. He left the Will with the bank manager for safekeeping.

Lolita has applied for probate of the 1999 Will. Travis' sisters have lodged a caveat to prevent Lolita getting the grant sought.

Advise Lolita on –

- (i) the validity of each of Travis' Wills;
- (ii) the documents, if any, which will be admitted to probate, and
- (iii) the effect of the caveat and the procedure for its removal.

QUESTION 5

- (a) By his Will dated June 6, 1994, Brain Schuler appointed Ross Marley and Cheryl Simpson as his executors and trustees. Schuler has recently died and Marley and Simpson wish to be advised as to the respective duties and responsibilities of the office of executor and trustee, and the importance of the distinction, if any, between the two offices.

Advise them.

- (b) What conditions have to be met before a trustee can purchase trust property?
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QUESTION 6

- (a) Sam is the sole executor and residuary beneficiary in his father's Will. In a fit of rage he threw a can of beans at his father, John, striking a fatal blow to his temple. He was consequently convicted of manslaughter and sentenced to life imprisonment. The other beneficiary and John's only other child is Angel who is twenty-one years old. Sam wishes to obtain probate of John's Will but Angel is objecting.

Advise Angel as to the type of grant which may be obtained and the procedure involved.

- (b) John died possessed of a coconut estate and a thriving chicken farm. The chickens are ready for market and the coconuts have to be reaped before they go bad. John's executors and beneficiaries, Lily and Sam, both live

abroad and do not have the time to come to your territory to deal with his estate. John's estate manager, Silas, is fearful that the estate will become bankrupt if he does not slaughter the chickens for market and reap the coconuts.

Advise Silas as to the type of grant which may be obtained and the procedure involved

- (c) Distinguish between a grant "de bonis non" and "double probate".
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QUESTION 7

Tom made a Will giving his house to his son, Arnie, the rest of his real estate to his daughter, Brenda, and his personal estate to his son, Charles. One of the witnesses to the Will was Arnie's wife. The executor was Donald, Tom's friend.

On Tom's death, a later Will was found in which Tom left his entire estate to his daughter Brenda. At the time of making this document Tom was ill. He had signed it and had asked his nurse to witness the signature, and told her that he would sort out the Will the next day. He died that very night.

Donald, without obtaining a grant, has started collecting Tom's assets. He has sold two valuable paintings to pay for the funeral expenses and his expenses in collecting the assets. He has put Tom's house up for sale. He has told Tom's children that he will 'fix things up so you will all benefit'. Two years have elapsed but he has done nothing further.

Advise Tom's children on –

- (i) the validity of the Wills and the gifts thereunder; and
 - (ii) the legality of Donald's actions.
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QUESTION 8

Tessa by her Will provided as follows –

- "1. I appoint my friend, Leroy, and my attorney-at-law, Stanley, as my executors.
- 2. I give to Stanley \$50,000 for his professional services to my estate.
- 3. I give \$100,000 and my 400 ABC shares to my daughter, Eve.
- 4. I give my house 'Nina' and the remainder of my money in my bank accounts after payment of all my debts to my husband.
- 5. I give my townhouse 'Maria' to my friend, Terry, free of all encumbrances to be paid out of my account at State Bank.
- 6. The residue of my estate to be divided as follows:- one third to Stanley, one third to Adam, one third to Eve."

Tessa left the following assets and liabilities.

ASSETS

Account with Dell Bank	\$ 900,000
Account with State Bank	\$ 600,000 ✓
200 ABC shares	\$ 200,000
500 XYZ shares	\$ 600,000

Townhouse "Maria"	\$2,500,000
House "Nina"	\$5,000,000
Yacht "Pinta"	\$1,250,000

LIABILITIES

Credit Card	\$ 50,000
Mortgage on house "Nina" as security for loan to purchase yacht "Pinta"	\$3,000,000
Mortgage on townhouse "Maria"	\$1,000,000
Other debts	\$2,250,000
Funeral debts and testamentary expenses	\$ 200,000

Stanley was one of the witnesses to Tessa's Will.

Advise the beneficiaries as to the distribution of Tessa's estate.
