

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2019

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 6, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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 black or dark blue ink. Erasable pens are not allowed.
- (f) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Miranda Hopeton, a legal assistant and a divorcee, drafted her own Will. While alone at home on the evening of May 22, 2011, she signed the Will. The sole beneficiaries under her Will are her nieces, Denise Phillipot and Gabrielle Smith.

On May 24, 2011, Miranda took the Will to the Real Estate Consultancy where she worked, and asked two of her co-workers Jennifer Able and William Sprat to witness her signature. While Jennifer was signing, Miranda, standing nearby at her desk, was speaking to a prospective purchaser interested in a property which was advertised for sale. William went to take an important telephone call in an adjoining office and returned after Jennifer had completed her signature.

William started to sign the Will in the presence of Miranda and Jennifer, but before he had finished signing, Jennifer went to her desk a few feet away, to complete a draft agreement for sale needed by the senior realtor. William completed his signature before Jennifer returned.

The Will has no attestation clause and is undated.

Miranda died on July 16, 2016 and her sister, Hortense Matthews, having learnt of the circumstances of the execution and attestation of the Will, intends to challenge it. The sole executrix under the Will, Miranda's best friend, Beverley Andrews, comes to you for advice.

Advise the executrix as to the validity of the Will.

QUESTION 2

In February 2015, Olivia Empire, an Accountant, made a Will with the following dispositions:

"(a) I give and bequeath my Range Rover motor vehicle, bearing registration number and letter 7157 EQ, to my daughter, Anastasia, absolutely;

- (b) *My apartment at Serenity Boulevard, Paradise Province, registered at Volume/Block 1250 Folio/Parcel 131, to my daughter, Anastasia, absolutely;*
- (c) *The sum of \$500,000 to my business partner and friend, James Ford; and*
- (d) *The rest and residue of my estate, of whatsoever kind, wheresoever located to my daughter, Anastasia.”*

Sometime in September 2017, Olivia learnt that Anastasia had stopped attending law school and was no longer pursuing her Legal Education Certificate. Anastasia was selected as a contestant in the Fashion Catwalk competition, to mark her entry in the fashion designing industry, her life's passion.

Olivia was deeply troubled, having expended a significant amount of her savings towards Anastasia's tuition. She invited Anastasia home during the teaching break. Anastasia returned home, unaware that her mother knew she was no longer pursuing her Legal Education Certificate. During dinner, Olivia indicated to Anastasia what she had learnt. However, Anastasia remained adamant that she would pursue her life's passion in fashion designing. Olivia left the dining table, and retrieved her Will from the safe, and returned to the dining table, in a fit of rage, and began tearing the Will in four pieces.

Anastasia realising what was happening, immediately persuaded Olivia that she would complete her Legal Education Certificate as final examinations were just weeks away. Olivia then proceeded to tape the four torn pieces of the Will, and put it back into her safe.

Olivia died on May 7, 2018. Anastasia upon reading the Will realized that James Ford, a beneficiary, is also one of the attesting witnesses.

Further examination of the Will also revealed that Olivia's signature is incomplete.

Advise Anastasia, who is the principal beneficiary under the Will, on the legal issues raised by these facts.

QUESTION 3

Arthur James died intestate in April 2018, leaving realty valued at \$9,500,000 and personalty valued at \$2,500,000, which includes personal chattels valued at \$700,000.

He is survived by Catherine, with whom he cohabited for 20 consecutive years, up to the time of his death. Catherine at the time of Arthur's death, had just filed a petition for dissolution of her marriage to John Aiken, a citizen of the United States of America, whom she had married in August 2010, with the hope of obtaining a green card to migrate to the United States of America.

John had made numerous promises claiming that he had started the filing process for Catherine. However, up to 2018, his promises were never evidenced by any documentation.

Arthur, during the subsistence of his relationship with Catherine, had twin daughters, Michelle and Mercedes, who are now nine years old. This was as a result of a relationship with another woman. Arthur's name is not on Michelle's and Mercedes's birth certificates.

Catherine and Arthur had no children together, however Catherine's two children from a previous relationship, Terrence Baldwin and Tanya Baldwin, were accepted as children of the family by Arthur.

Arthur is also survived by his mother, Victoria James and father, Zechariah James. After Arthur's death, Catherine's sister, Fiona, told her that she and her children were entitled to "get at least half of everything".

Catherine consults you for legal advice.

Advise Catherine, giving reasons, as to:

- (i) the person(s) entitled to take the grant of representation
 - (ii) the type of grant of representation to be issued; and
 - (iii) the distribution of the estate;
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QUESTION 4

Nevine Cotterel died on October 26, 2011, leaving a Will dated August 11, 2004, in which her entire estate, valued at \$9,500,000, was left to her husband, Paul, and to Kayla, her only child, born in 1990.

Both executors under the Will, Venice Boyd and Annmarie Reid, predeceased Nevine in 2007. Venice died from complications due to an ectopic pregnancy, and Annmarie died from the H1N1 influenza virus.

Paul wishes to wind up Nevine's estate.

- (i) Advise Paul as to the relevant grant to be issued and the practice and procedure to wind up the estate.
 - (ii) Detail the contents of the Oath (or Petition and Oath in the case of Belize) to lead the grant of representation.
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QUESTION 5

Everald Austin died in 2010, leaving a Will he had executed on May 1, 2006, in which his entire estate, valued at \$7,700,000 was left to his two nephews, Edward and Jason, his only living relatives.

Sandrina Forrest and Rajae Ridgemount, Everal'd's best friends, are the two executors appointed under the Will. Both executors are willing to discharge their functions as executors.

Rajae is currently completing his studies in archaeology, in Spain, and will be back in the jurisdiction in two years. Rajae has agreed to Sandrina obtaining a grant of representation in her (Sandrina's) name, and he (Rajae) will get involved, only if necessary.

- (i) Advise Sandrina as to the relevant grant to be issued to her and the practice and procedure to complete the administration of the estate.
 - (ii) Detail the contents of the Oath (or Petition and Oath in the case of Belize) to lead the grant.
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QUESTION 6

Abigail Sweeney died intestate on March 1, 2013. She is survived by her two adult children, Janet Bakers and Daniel McPherson. Abigail's mother, Fay Stewart, is still alive.

Her estate is valued at \$7,800,000 and comprises solely of a dwelling house. The estate liabilities total \$800,000.

Janet and Daniel now wish to take the necessary steps to administer their mother's estate.

- (a) Advise them as to:
 - (i) the relevant grant to be issued and the person(s) to make the application; and
 - (ii) the practice and procedure to wind up Abigail's estate.
 - (b) Detail the contents of the Oath (or Petition and Oath in the case of Belize) to lead the grant of representation.
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QUESTION 7

Victor Laidley, a restaurateur, migrated to England in 1982, after marrying his high school sweetheart, Caroline. Together they built a very successful chain of restaurants, known for its authentic Caribbean and Central American flavour. Victor died in November 2015, leaving a net estate worth \$50,000,000, including realty and personalty in England and your jurisdiction.

The real property in your jurisdiction totals \$10,000,000 and personalty \$5,000,000.

Victor's executors, Joy Brown and Matthew Grandison, have obtained a grant of probate in England.

Joy and Matthew now wish to take the necessary steps to administer the estate in your jurisdiction, and come to you for legal advice.

- (i) Advise them as to the steps to be taken to administer the assets in your jurisdiction.
- (ii) List the documents to be prepared and filed in in the Supreme/High Court.
- (iii) Detail the contents of the Oath (or Petition and Oath in the case of Belize) to lead the grant of representation.

QUESTION 8

Rachel Wickham and Henry Fernandez, were appointed executors of the Will of Stanbury Chang, which was dated June 16, 2014.

The estate is valued at \$9,700,000 comprising both real and personal property. Estate liabilities total \$1,700,000.

Stanbury died on August 6, 2015.

At the time of Stanbury's death, Henry was outside the jurisdiction, in Alberta, Canada, working as a consultant, which required him to reside there for the four-year duration of the consultancy.

Henry's consultancy is expected to end sometime in 2019 and is subject to being renewed for a further period of four years.

It was agreed that Rachel would pursue the application for probate in Stanbury's estate on her own.

Rachel was granted probate on May 1, 2018 and started to administer Stanbury's estate. Rachel died suddenly of a heart attack on April 6, 2019, having previously paid creditors and transferred all of the realty and company shares, in accordance with the Will.

However, proceeds of savings accounts with two financial institutions, as well as equipment and other personal property, which have not yet been administered total \$10,000,000.

Henry, has terminated his international consultancy and is now able and willing to complete administration of Stanbury's estate. Henry seeks your legal advice.

- (i) Advise Henry as to the steps to be taken to administer the assets in your jurisdiction.
- (ii) Advise Henry as to the type of grant for which he may apply.
- (iii) Detail the contents of the Oath (or Petition and Oath in the case of Belize) to lead the grant of representation.

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