

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2013

PROBATE PRACTICE AND PROCEDURE

(TUESDAY, AUGUST 13, 2013)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Stephanie Thomas, a widow, died in 2009 leaving her entire estate, via a 1997 Will, to her two adult children, Marcia and Andre. She appointed Audrey Gray and Herbert Whyte as her executors. Audrey migrated to Spain and became a nun. Herbert obtained probate in early 2012 and started winding-up the estate but died suddenly without completing the administration of the estate.

By his own Will made in 2004, Herbert had appointed Melvin Crewe and Donovan Simpson as his executors, both of whom obtained a joint grant of probate of Herbert's Will in early 2013.

Marcia and Andre have many obligations and want the estate wound up.

- (i) Advise them as to who is to complete the process of administering Stephanie's estate, stating the procedural steps required.
 - (ii) Assuming that Marcia and Andre have to obtain a grant for their mother's estate, detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.
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QUESTION 2

Orlin Smith died on June 11, 2008. Believing that her father died intestate, Whitney, one of his three children, applied for a grant of letters of administration in his estate in 2010. The application was advertised in the leading local daily newspaper and the gazette.

Orlin's lawyer was Frederick Solomon who advised him in 2000 when Orlin executed his Will.

Before the grant to Whitney is issued, Sally Jones, one of Frederick Solomon's secretaries, remembered that Orlin had, in 2007, given to her the Will for safekeeping by the firm. She cannot locate the Will but found a photocopy of it on Orlin's file.

Under the Will, Orlin's \$5,000,000 estate is shared equally among the children who were also appointed joint executors.

- (i) Advise the children 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.

QUESTION 3

By her Will dated September 22, 1995, Scarlett Swanson appointed Primrose Stoute and Ezekiel Statham as her executors. She left her entire estate valued at \$6,000,000 to her husband, Jonathan, and her only child, Dawn, in equal shares. Scarlett and Ezekiel died in August 2009 while sky-diving in Switzerland.

Primrose is studying to be a Minister of religion and maintains that she is too busy to take any steps to wind up Scarlett's estate, in spite of many requests from the deceased's family.

Jonathan and Dawn consult you indicating their desire to have Primrose removed, or circumvented, as executor, and to get permission to wind up Scarlett's estate without any further delay.

- (i) Advise them as to the practice and procedure in order to achieve their objective(s).
- (ii) Assuming the beneficiaries are successful in having Primrose removed and obtaining permission to proceed, detail the contents of the Oath (or other document corresponding to an Oath) to lead the relevant grant of representation.

QUESTION 4

In 2009, Howard Walters, a widower, died leaving a Will made in 2000 in which his only children, triplets Sasha, Sonia and Stanley, (then minors) were appointed executors and the sole beneficiaries of the \$3,800,000 estate.

In 2010, Howard's brother Kevin and his wife Christina, the legal guardians of the children, had obtained a grant of representation in Howard's estate but are still to complete the winding-up. The children, now adults, wish to obtain a grant in Howard's estate in their own right.

- (i) List the documents to lead the grant to the children.
- (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to be done by the children to lead the grant.

QUESTION 5

Stacy Exeter made a Will on November 11, 2007. She died on May 11, 2009 leaving an estate valued at \$6,200,000. The beneficiaries are her husband, Phillip, and her two children, Desiree and Paolo. The executors, Wilhelm Manhertz and Emma Scunthorpe, come to your law offices for information as to what to do to complete the winding-up of the estate.

- (i) Advise them as to the practice and procedure to wind up 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 6

Arthur Browne died intestate on March 1, 2010. He has five children (Yvonne, Mitsy, Nyron, Janet and Daniel) with Rosetta McDougal with whom he had lived in a common law relationship for twenty-five continuous years before his death. His estate is valued at \$4,500,000 including a parcel of land, \$400,000 in a bank account, a motor car and other personalty.

At the time of Arthur's death Janet and Daniel were ten and twelve years old, respectively.

- (i) Advise Rosetta as to the practice and procedure to complete the administration of Arthur's estate, including the distribution of the assets.
 - (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.
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QUESTION 7

Esmie Virtue, a spinster, signed her Will at home on the morning of February 14, 2007 when she was alone in her living room. The sole beneficiaries under the Will are her nieces Marilyn Virtue and Sheila Virtue.

Esmie took the Will to the law firm where she worked as a paralegal and asked two of her co-workers, June Pryce and Samantha Davis, to witness her signature. While June was signing, Esmie, standing nearby, was speaking to a client of the firm, and Samantha went to take an important telephone call in an adjoining office. Samantha returned after June had completed her signature.

Samantha started to sign the Will in the presence of June and Esmie but before she had finished signing, June went to her desk a few feet away to complete an urgent letter for the firm's senior partner. Samantha completed her signature before June returned. The Will has no attestation clause and is not dated.

Esmie died in 2010 and her brother Jonah Virtue, having learnt of the circumstances of the execution and attestation of the Will, intends to challenge it. The sole executor under the Will is Esmie's best friend Troy Rubinstein who comes to you for legal advice.

Advise the executor as to the validity of the Will.

QUESTION 8

Michael Dixon executed his Will on February 27, 2006 leaving his entire estate, valued at \$7,000,000, to his three adult children (Maurice, Petagae and Willow) in equal shares. He died on July 31, 2011.

No executor was named in the four-page Will although it contained the following clause:

"I want my very good friend Precious Podolski to ensure that everything is alright."

The 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) Advise the children as to the type of grant to be issued and the person(s) to make the application.
- (ii) List the documents to be filed in support of the application for the grant of representation.
- (iii) Detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.

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