

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2013

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 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

Viola Whitstone, a restaurateur, migrated to Manchester, England in 1972 after marrying her childhood sweetheart, Felix Whitstone. Together they built a very successful chain of restaurants and became wealthy. She died in April 2009, leaving a net estate worth \$12,000,000 including property in England, the United States of America and your country.

Her executors, having obtained a grant of probate in England, now wish to take the necessary steps to administer the estate, valued at \$4,000,000, in your country.

- (i) Advise her executors as to the steps to be taken to achieve their objectives.
 - (ii) List the document(s) to be filed in support of the relevant application(s).
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QUESTION 2

Samuel Jones executed his Will on December 22, 2000. He died on June 30, 2009 leaving an estate valued at \$5,200,000. Peaches Lindo and David Wilson were named as the executors. The beneficiaries under the Will are Samuel's three children (Thomas, Wayne and Norma) who are all adults. Peaches renounced her executorship and migrated in 2010. David obtained probate of the Will in January 2012 and while he was in the process of clearing the expenses of the estate he died in a car crash in March 2012.

David had made a Will in 2004 but the sole executor thereunder, Jerome Daye, died with him in the said car crash. Samuel's children come to your law offices for advice as to what is to be done to complete the winding-up of their father's 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 3

- (a) List the order of payment of debts when an estate is bankrupt or insolvent.
- (b) Mildred Gray, a widow, died testate in 2011 leaving the following assets:
 - (i) jewellery valued \$500,000;
 - (ii) a bank account with a balance of \$1,000,000;
 - (iii) an insurance policy valued \$2,000,000 with her only child, Trevor, named as the beneficiary; and
 - (iv) her apartment “*Asgard*” worth \$5,000,000.

Mildred’s Will contained the following dispositions and directions:

- (i) “all my personalty, except cash, to be given to my sister Melanie;
- (ii) my apartment is to go to my son Trevor, free of any mortgage or other obligation; and
- (iii) any residue is to go to my niece Nicole.”

Mildred left the following debts:

- (i) mortgage balance on the apartment of \$2,000,000; and
- (ii) the sum of \$1,500,000 borrowed from her friend, Joseph.

Advise Mildred’s executor, Devon Strachan, as to the payment of the various debts and the distribution of the estate.

QUESTION 4

On January 11, 2012, Peter Stillwell died intestate after a long illness. He left a net estate valued at \$6,500,000 including personalty and realty. At the time of his death he had been separated for eight years from Marion, his wife of thirty years. The marriage produced three children, Frank, Leroy and Judith who are now adults. Leroy died in 2005 leaving his widow, Sarah, and four-year old twins, Tammy and Timmy, who are all alive.

Peter and Fiona Walker had started a common law relationship in March 2006 and the union produced two children, five-year old Junior and four-year old Millicent. After frequent arguments the common law union with Fiona deteriorated and Peter harboured serious thoughts of seeking a possible reconciliation with Marion, with whom he had maintained regular contact over the years. In fact, a few days before he died, he and Marion had decided to attend counselling sessions.

After Peter's death Fiona's neighbour Jacob, a cosmetologist, told her that she and her children were entitled to *"get at least half of everything"*. Fiona consults you for legal advice.

Advise Fiona as to:

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

QUESTION 5

In February 2010, Phyllis Green died leaving a Will she had made in 2001. The beneficiaries of her \$5,000,000 estate are her husband, Robert, and their adult children, Dwight and Shauna

who are both attending university. The sole executor, Ezra Carlsen, is studying in Holland and has executed a power of attorney authorizing Robert to sort out the estate.

Robert visits your office seeking legal advice as to how to proceed to complete the administration of the estate.

- (i) Advise Robert as to the relevant practice and procedure, including stating the documents necessary, to lead the grant to him
- (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 6

George Brenton died in 2009, leaving a Will he had executed in 2006, in which his entire \$4,500,000 estate was left to his two nieces, Doreen and Rainee, his only living relatives. Scott Blades and Ricardo Lewis, Brenton's good friends, are the two executors under the Will. Both men are willing to discharge their functions as executors. Ricardo is in Italy studying art and will be back in the jurisdiction in two years. He has agreed to Scott obtaining a grant of representation in his (Scott's) name and he (Ricardo) will get involved only if necessary.

- (i) Advise Scott as to the relevant grant to be issued to him 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.

QUESTION 7

Tina Sparkes died in 2011, leaving an estate valued at \$7,000,000 comprising primarily a chicken hatchery. Her sole, surviving relatives are her two adult children Margaret and Oswald who have never got along. Margaret has produced a Will, dated March 15, 2008, appointing her the sole executor and leaving eighty percent of her mother's estate to her with the remaining twenty percent to Oswald.

Margaret was about to commence proceedings to obtain probate of the 2008 Will when Tina's lawyer, Mark Brewster, produced another Will, dated September 11, 2009, appointing both children as executors and dividing the estate equally between them. Margaret believes that there is a "*conspiracy of deception*" between Mark and Oswald and that the 2009 Will is a forgery.

Margaret filed a law suit to challenge the 2009 Will and agreed with Oswald to have their mother's business partner, Reginald Bloom, manage the estate until the issues are resolved between the parties.

- (i) Advise Margaret on the practice and procedure to put Reginald in a position to deal with the estate.
- (ii) What difference, if any, would there be with the relevant practice and procedure if the chicken hatchery needed urgent attention and there was no issue, or law suit, regarding the validity of any Will.

QUESTION 8

In October 2004, Jethro Blake, a botanist, made a Will with the following gifts:

- “(a) my motor vehicle to my son Charles;
- (b) my apartment at ‘Utopia’ to my wife Cecile;
- (c) the sum of \$100,000 to Bentley my friend for life; and
- (d) the rest of my estate to be divided equally among Cecile, Charles and any children Charles might be blessed to have”.

In 2006 Jethro having learnt that Charles had changed his mind from studying botany and had decided to become an economist, became angry and tore up the 2004 Will in the presence of his office staff. Later that evening, while alone in his study, he taped up the pieces of the Will and put it into his safe. The following week he sold his motor car and started to ride a bicycle to work.

In 2007 he executed a Codicil leaving his bicycle to his secretary Miriam Anderson.

In 2009 Jethro executed another Codicil to the 2004 Will appointing his banker, Stewart Browne, as his executor. In this second Codicil he also gave the sum of \$250,000 to Neville Grunt, the pastor of his church, whom he believed to be “*the new god*”. From 2009 until his death in 2012, Jethro would greet the pastor with “*hail oh blessed god*” each time that he saw him. Jethro left an estate valued at \$10,000,000.

Charles comes to you for legal advice as to the validity of the various testamentary documents and the distribution of Jethro’s estate. Advise him.

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