

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2014

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 12, 2014)

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

In February 2013, elderly Agnes Tao decided to make her Will, gifting her entire estate to her three adult children. Although Tao was blind, she was at all material times in full possession of her faculties.

Tao asked her neighbour, June Lise, to come to her home to assist her with the preparation of the Will. When Lise arrived, Tao dictated to her the contents of the Will, which Lise wrote down in ink on a sheet of paper. Lise then read over the Will to Tao, who thereafter nodded in approval. Tao asked Misty Aron, an employee of the household, to be one of the attesting witnesses to the Will.

With Tao, Lise and Aron all present in the same room, Lise guided Tao to the place at the end of the Will where her signature was to be made. Tao signed the Will accordingly. Lise and Aron then added their signatures immediately below Tao's signature.

Tao died on April 2, 2014, and both Lise and Aron have survived her.

The executors under Tao's Will have retained you to facilitate the extraction of a grant of probate. On examination of the Will, you make the following observations:

- (i) Tao's signature, although apparently complete, is very shakily made, and is not written in a straight line, but in a "V" shape;
- (ii) the Will is undated; and
- (iii) there is no attestation clause.

- (a) Identify the legal issues that arise from the observations made.
 - (b) Citing relevant laws (if any), advise the executors of any Affidavit(s) that is/are required to be filed in the Supreme/High Court to address the issues identified under (a).
 - (c) Detail the essential contents of the Affidavit (or principal Affidavit ONLY, if more than one) to be filed in court under (b), indicating the person who will execute it.
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QUESTION 2

- (a) Jon Fee executed his Will in 2009 and appointed two executors thereunder: his cousin, Mark Clan, and Clan's son, Ian, then 15 years old.

The beneficiaries under Fee's Will are his wife Hilda, their adult daughter, Tara, his cousin Mark Clan, and Ian Clan.

Jon Fee died in March 2010, leaving a \$15,000,000 estate, and was survived by his executors and all the other beneficiaries under his Will.

Based on these facts, indicate what type of grant of representation to Fee's estate would ordinarily be applied for in 2010, and by whom. Briefly state your reasons.

- (b) Based on your answer to (a), identify the principal details to be included in the Oath (or other appropriate document corresponding to an Oath) to lead the grant of representation to the estate.

- (c) Assume that the relevant grant of representation to Fee's estate was made by the court in 2011 to the applicant(s) whom you have identified under (a) ("the grantee(s)"). Having started to administer Fee's estate, the grantee(s) became physically incapacitated in 2013, and is/are now finding it impossible to complete the winding up of the estate.

Hilda Fee, the testator's widow and a beneficiary under the Will, is anxious to have the administration of the estate finalised. She comes to your office in 2014, seeking guidance as to the appropriate steps that can now be taken in the matter.

Assuming that all relevant persons are alive, advise Hilda as to the type of grant of representation to Fee's estate which may ordinarily be applied for in these circumstances, and by whom. Briefly state your reasons.

QUESTION 3

Martin Tabb executed his Will in April 2010. At that date, Tabb owned the following assets:

- i) a house at 24 Troy Lane, in the capital city;
- ii) an apartment at 10 Eagle Mews, in the capital city;
- iii) a 2009 BMW motor car;
- iv) a wide range of household furnishings;
- v) valuable jewellery inherited from his late grandfather, as well as more recently purchased personal effects;
- vi) shares in private and public companies; and

- vii) several bank accounts.

In his Will, Tabb disposed of his assets as follows:

- i) the house at 24 Troy Lane to his eldest child, Rick, absolutely;
- ii) the apartment at 10 Eagle Mews, together with particular household furnishings, to his wife, Anna, absolutely;
- iii) the 2009 BMW motor car to his daughter, Leah, absolutely;
- iv) jewellery inherited from his grandfather, to his son Jack absolutely; and
- v) the residue of his estate “to my three children Rick, Leah and Jack, in equal shares absolutely”.

In 2012, Tabb sold the house at 24 Troy Lane and bought a luxurious townhouse (“Townscape”) in the suburbs.

Tabb died in December 2013, and is survived by his adult children Rick and Jack. Both Tabb’s wife, Anna, and his daughter, Leah, predeceased him. Leah was survived by her two adult children, Tim and Maya, who are still alive.

The executors of Tabb’s Will have obtained a grant of probate of the Will. They now specifically seek your guidance on the distribution of the gifts under the Will.

Assuming that the debts of the estate are fully accounted for, and that the assets forming part of the estate are as indicated above, advise the executors as to the distribution of the gifts.

QUESTION 4

Patrick Wuk, a grocer, died in 2012, leaving his Will under which he appointed Mary Chay as sole executrix.

Wuk's estate is worth \$22,000,000. At his death, Wuk was owed \$75,000 for groceries supplied to John Frie, a trusted customer.

The dispositions under the Will are as follows:

“ \$150,000 to my brother Xavier Wuk absolutely.

ALL THE REST AND RESIDUE of my estate I GIVE to my sister Sheryl Gann absolutely.”

Over the past year, Gann, a beneficiary under the Will, had been urging Chay, the executrix, to take steps to obtain a grant of probate of Wuk's Will. Chay had repeatedly promised to act, but has to date failed to initiate any steps in relation to the estate. She also refuses to renounce her executorship.

Frustrated, Gann attends your office seeking advice as to the measures that can be taken to have the estate administered.

- (a) Advise Gann on the initial steps that would ordinarily be taken in the circumstances outlined, describing:
- (i) the essential contents of any document(s) that may have to be filed in court;
 - and

- (ii) the law and procedure in relation thereto.

(Do NOT detail the documents relevant to the substantive application for a grant of representation in the estate.)

(b) Would your answer to (a) be any different if Chay, the executrix, had during 2013:

- (i) demanded and collected from Frie, Wuk's debtor, the \$75,000 owed by him; and also
- (ii) advertised for creditors,

but still refuses to seek a grant of probate? If so, **BRIEFLY** indicate the material differences in the initial steps suggested.

QUESTION 5

Eva Barr made a Will in 2003 in which she gifted all of her realty to her stepdaughter, Gail Barr, a spinster at the time, and the residue of her estate to a particular charity.

In 2008, Eva made another Will in which she gave her entire estate to Gail, who was still unmarried, and was experiencing severe financial difficulties.

The 2008 Will contained no express revocation clause.

In 2011, Gail married an affluent businessman, and subsequently, regularly vacationed overseas at exotic locations. In summer last year, Eva confided in her neighbour that she was pleased

that Gail's fortunes had remarkably improved; and further, that she (Eva) had contacted her attorney-at-law with a view to making a new will distributing her entire estate among several charities.

Eva died suddenly in late 2013, without having made another Will. However, both the 2003 and 2008 Wills were found among her important documents. The 2003 Will was intact, but in the 2008 Will, the signatures of Eva and the attesting witnesses at the foot of the Will were cut out.

Additionally, in the margin next to the clause giving the entire estate to Gail, the following words, in Eva's handwriting, appeared in red ink:

"This is no good - I am making a new Will".

The executors under the 2008 Will attend your office seeking advice as to the validity of both the 2003 and 2008 Wills.

Advise the executors.

QUESTION 6

Karl Shue died intestate in January 2014, leaving a net estate consisting of both realty and personalty, valued at \$28,000,000.

Karl had been married for many years to Diana Fort, but in 2004, he commenced a relationship with Sally Fern, a widow, and left the matrimonial home to live with her. That relationship continued up to the time of Karl's death.

Diana died in 2007. No divorce or judicial separation proceedings had been instituted between the Shues.

Karl is survived by Sally, his mother, Yela Shue, and two children: Bart, an adult, who was born from the marriage to Diana; and Mia, who is six years old, and a product of the relationship with Sally.

Karl had another child, Hans, also an offspring of the marriage to Diana, but Hans had predeceased Karl. Hans was survived by his two adult children, Jack and Jill, who are still alive.

Karl's mother, Yela, has always blamed Sally for the rupture of Karl's marriage, and has recently been overheard to say that Sally and Mia have no share in her son's estate.

Unsettled, Sally comes to you for legal advice.

Advise Sally as to the manner in which Karl's estate should be distributed, citing relevant legislation.

QUESTION 7

Trevor Bane made his Will on August 2, 2007, appointing Alex Stak as his sole executor, and dividing his estate equally between his two adult children, Jem and Gary.

Trevor Bane died on March 11, 2009, leaving an estate worth \$10,000,000. Stak obtained a grant of probate of Bane's Will in January 2013 and, after discharging debts and liabilities, had started the process of distributing the assets of the estate to the beneficiaries. However, Stak died suddenly of a heart attack in September 2013, with real property and company shares belonging to Bane yet to be transferred according to the terms of the Will.

Stak left a Will, executed in 2005, under which Mack Carr and Sheila Wait were appointed his executors. Carr formally renounced his executorship, but in December 2013, Wait took initial steps to secure a grant of probate of Stak's Will. Before probate could be obtained, however, Wait died in April this year after undergoing emergency surgery.

Jem and Gary Bane now attend your office seeking advice as to the necessary steps to be taken to complete the winding up of their father's estate.

- (i) Advise the Banes as to the steps required to wind up Trevor Bane's estate; and
- (ii) In the circumstances of this case, detail **five** essential matters to be included in the Oath (or other appropriate document corresponding to an Oath) to lead the relevant grant of representation. Your answer must reference at least three relevant exhibits.

QUESTION 8

Jo Baer is the sole executor under the Will of Nancy Reed, a businesswoman, who died last year leaving an estate comprising both realty and personalty valued at \$10,000,000. Baer recently obtained a grant of probate of Reed's Will.

Reed, who was a sole proprietor, had operated her own business ("Dine in Style") as a caterer. Baer's investigations into Reed's estate have revealed the following outstanding liabilities:

- (i) \$7,000,000 owing to True Loan Building Society, arising from a mortgage loan issued on the security of Reed's townhouse;
- (ii) \$3,500,000 representing income and other tax arrears for several years;
- (ii) \$1,500,000 owing to Build Big Construction Ltd for remodelling work effected on Reed's townhouse;
- (iii) \$100,000 owing to the guest house that catered for Reed's funeral reception;
- (iv) \$80,000 owing to the funeral home for providing cremation services for Reed;
- (v) \$70,000 representing unpaid salary to employees of Dine in Style; and
- (vi) \$30,000 for foodstuff supplied by a wholesaler to Reed's catering business.

Advise Baer as to the options open to him for dealing with the debts of Reed's estate, as well as the distribution of the assets.

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