

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2012

PROBATE PRACTICE AND PROCEDURE

(FRIDAY, AUGUST 10, 2012)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Harry Osbourne, a bachelor, died intestate in April, 2007. His only child Simonia, an adult, wishes to apply for a grant of representation in her father's \$5,000,000 estate.

- (i) Advise Simonia as to the practice and procedure to obtain the relevant grant.
  
  - (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.
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## **QUESTION 2**

By his Will made in 2007, Spiro Spade, a widower and father of two adult sons, Hugh and William, appointed Mel Brown and Donny Whitlock as his executors. Spiro left his entire \$3,000,000 estate to his two sons in equal shares.

In 2008 Spiro died and in 2009 Mel renounced his executorship without having done anything in the estate. Donny, without obtaining the relevant grant of representation, advertised for creditors of the estate and settled some debts allegedly incurred by Spiro. In January, 2011 Donny migrated without obtaining the relevant grant and no one can locate him.

Hugh and William who are anxious to have their father's estate wound up, visit you at your chambers and wish to be advised as to the practice and procedure to achieve their objective. Advise them.

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### **QUESTION 3**

In 2010 Jackie Mason, a widow, died leaving a Will she made in 2008. The sole beneficiaries of her \$4,000,000 estate and the executors are her only children, Rainee and Tejean, twins born in 1997.

The legal guardians of the twins, Willard and Petunia Burrowes, want to obtain a grant of representation on behalf of the children.

- (i) List the documents to lead the relevant grant.
  
  - (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.
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### **QUESTION 4**

You are a young associate in the law firm *Proud, Proper & Associates*. The senior partner asks for your opinion in relation to the following matter:

Phylcia Stiles has retained the law firm stating that she is the sole executrix in the 1999 Will of Mary Templeman who died in 2008. She wishes to have the Will admitted to probate without further delay. On perusing the Will, you note the following.

- (a) In the third line, it reads, *"I appoint my best friend Gladys Samms as executrix of this my last Will and testament."* The name *"Gladys Samms"* has been crossed-out and the name *"Phylcia Stiles"* substituted. There are no signatures or initials beside this change.

Phylcia's instructions are that Wyatt Grodin and Winnifred Cooke are the attesting witnesses and they were present, and saw, when the change was made but did not sign or initial the change.

- (b) One line of the Will reads, *"To my brother, Paul, the sum of \$75,000 and my collection of stamps."* The words *"to my son, Pablo, the sum of \$100,000"* are inserted after the words *"the sum of \$75,000"* and are preceded by an asterisk. There was nothing beside this change except the initials, "WG" and "WC", placed there by the attesting witnesses.

Phylcia also instructs that Mary made this change in her own handwriting before executing the Will.

- (c) Another line of the Will reads, *"To my niece, Patsy,"* and the words thereafter are completely obliterated. It is impossible to see with the naked eye what was written there before.

Prepare the requested opinion to your senior partner advising Phylcia on the effect of each change to the Will. Give reasons for your opinion.

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### **QUESTION 5**

- (i) Discuss, briefly, the various ways in which an insolvent estate can be administered.
- (ii) List the order of payment of debts when an estate is insolvent.
- (iii) What is the chief concern of a personal representative when an estate is solvent? Give the reason(s) for your answer.

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## **QUESTION 6**

Salome Wellington died in 2010 leaving a Will made in 1999 in which her entire \$3,500,000 estate was left to her husband, Joseph, and their only child Timothy born in 1998. The executors under the Will both died in 2009 in a freak accident. Joseph wants to wind up Salome's estate.

- (i) Advise Joseph as to the relevant grant to be issued 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.
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## **QUESTION 7**

John Grayson made a Will in 2003 leaving his entire \$4,000,000 estate to his two adult children, Blake and Sisyphus, in equal shares. In January, 2008 he executed a Codicil to the 2003 Will and left the sum of \$250,000 to his childhood friend Wayne Service. In the Codicil he appointed his banker, Barak James, as his sole executor.

On August 3, 2009 his sons came home drunk early one afternoon and in a fit of rage John tore the 2003 Will into several pieces, threw it in the garbage and said *"that is the end of that"*. Maud Miller, his housekeeper of many years, immediately took the pieces of the Will from the garbage bin and begged John to re-consider.

On August 4, 2009 John took the pieces of the 2003 Will to his office, pasted them together and re-signed the Will in the presence of two of his secretaries who signed as witnesses. On the same day he also made another Will leaving all his furniture to Maud and this was witnessed by the said secretaries. John died in 2011.

Advise Barak James as to the validity of the respective documents and the distribution of John's estate.

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### **QUESTION 8**

Conchita Bligh executed her Will on March 12, 2005. She died on April 21, 2008 leaving an estate valued at \$2,200,000. Rupert Dooch and Georgio Wilson are the executors and joint beneficiaries. They 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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**END OF PAPER**