

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2015

PROBATE PRACTICE AND PROCEDURE

(AUGUST 7, 2015)

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

Under Rana Kelp's Will of 2008, she appointed Bea Muir, Li Arty and Joe Nerd, all adults, as her executors. Kelp's entire estate is gifted to her favourite charity, All for Children.

Kelp died in November 2014, leaving an estate worth \$8 million.

Muir has formally renounced her executorship. Arty currently suffers from chronic neck spasms. While she is willing, in principle, to assist with the administration of Kelp's estate, she would prefer to take no part in the affairs of the estate until her physical condition improves.

Against this background, Nerd seeks your guidance as to what can now be done to raise a grant of representation to the estate.

Briefly advise Nerd, and detail the essential contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant of representation to Kelp's estate.

QUESTION 2

In June 2009, Tex Reed decided to make his Will. Reed was illiterate, and asked two friends, Will Lox and Perry Mayo, to assist with the preparation and execution of the Will.

Lox and Mayo arrived together at Reed's home. With Mayo present, Reed dictated the intended contents of his Will to Lox, who recorded the instructions in ink on a sheet of paper. Lox then read over the Will to Reed. After heaving an audible sigh of relief, Reed exclaimed: "Let's go!".

Taking a pen, Reed then made an “X” at the end of the Will, and immediately thereafter, first Lox, and then Mayo, inserted their signatures just below Reed’s mark.

Reed’s trusted caretaker, Clive Ax, who is literate, was also present during the entire process of preparation and execution of the Will.

Reed died in February 2015. Both Lox and Mayo are also now deceased. Ax is still alive.

The executors under Reed’s Will have now retained you to obtain a grant of probate. On examination of the Will, you observe the “X” mark, and that there is no attestation clause.

Detail the essential contents of the relevant affidavit (or other evidence) to be filed in court to address the legal issues that arise on the face of the Will, indicating the person who will execute (or provide) it.

QUESTION 3

Sheila Saff, a university lecturer of Caribbean descent, had been living permanently in Nigeria for decades. Most of her assets were in Nigeria, but she also maintained a beachfront bungalow, and accounts at several financial institutions, in your local jurisdiction.

Saff died in April 2013, leaving a Will which appointed Ari Jest and Paula Fate as executors. In September 2014, Jest and Fate, who live in Nigeria, were granted probate of Saff’s Will by the relevant court in that country.

Jest and Fate now want to take steps to obtain legal authority to administer the real and personal estate Saff left in your jurisdiction.

- (i) Advise Jest and Fate as to steps to be taken to administer the local assets.
 - (ii) List the documents to be prepared and filed in the Supreme/High Court.
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QUESTION 4

Errol Carr made a Will in 2002 in which he gave his entire estate to the charity, Elders in Focus.

In 2007, Carr made another Will in which he devised a house at Uppity Road in the capital city, which he had recently bought, to Quentin Jons absolutely. The Will contained no other dispositions.

The 2007 Will had no express revocation clause.

At the time of his death in September 2014, Carr was the owner of the following assets:

- (a) the house at Uppity Road;
- (b) a country villa; and
- (c) shares and other personal property.

The 2002 Will was found after Carr's death, intact, along with insurance policies and other important documents, in Carr's purpose-built safe. The 2007 Will has not been found, although

it was last seen, prior to Carr's death, in the same safe. However, authentic copies of the 2007 Will are available.

The executor under the 2007 Will consults you for advice as to the validity of both the 2002 and 2007 Wills.

- (i) Advise the executor accordingly.
 - (ii) Based on your answer to (i), advise as to the allocation of the assets of the estate (assuming that they can be distributed to the relevant beneficiaries without impediment).
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QUESTION 5

Cara Syle died in December 2014, leaving a net estate comprising both realty and personalty valued at \$11 million. She did not leave a will.

Cara is survived by Wes, her husband of 28 years, and by their three children: Ivan (aged 22 years), Dora (aged 16 years) and Phil (aged 13 years).

Wes now wants to know what steps he needs to take in order to obtain legal authority to administer Cara's estate.

- (i) Advise Wes as to the main particulars and documents which he needs to provide to you, and the steps to be taken, to facilitate the process of administration of the estate;

(DO NOT include any step or action subsequent to the issuing of the relevant grant of representation).

- (ii) Detail the essential contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant of representation to the estate.
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QUESTION 6

Pat Fund, a management consultant, made her Will in January 2012. At that date, Fund owned the following assets:

- (a) a penthouse apartment (“Fly Hi”) in the capital city;
- (b) a vacant lot of land in Jet Skee, a tourist resort;
- (c) a 2011 Audi Sports Utility Vehicle (“SUV”);
- (d) an extensive collection of rare ceramic items from the Latin American ceramicist, Maria Alto;
- (e) a wide range of household furniture and intimate personal items;
- (f) 25,000 shares in Radio Update Limited (“RUL”), a public company;
- (g) other shares and investments; and

(h) several bank accounts.

In her Will, Fund disposed of her assets as follows:

- (i) the penthouse apartment, "Fly Hi", to her daughters, Lili and Ola, as joint tenants absolutely;
- (ii) the lot of land in Jet Skee to her sister, Tara Dye, absolutely;
- (iii) the Audi SUV to her daughter, Ola, absolutely;
- (iv) the Maria Alto ceramic collection to her former art teacher, Dee Mural, absolutely;
- (v) the RUL shares to her son, Pete, absolutely; and
- (vi) the residue of her estate to her children, Lili and Pete, in equal shares absolutely.

In early 2013, Fund had made the Maria Alto ceramic collection available on loan to a leading art gallery for a six-month exhibition. In June 2013, a mystery fire broke out at the gallery and Fund's entire ceramic collection was destroyed.

Fund died in March 2015, and is survived by her daughter, Lili, son, Pete and former teacher Mural. All surviving beneficiaries are adults.

Both Fund's daughter, Ola, and sister, Dye, predeceased her. Ola was childless, but Dye had a daughter, Ivy, who survived her and is still alive.

The executor of Fund's Will has obtained a grant of probate of the Will. He now seeks 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 executor as to the distribution of the gifts.

QUESTION 7

For several decades Hal Gosa ran Gravel and Sand (“G & S”), a construction business, as sole proprietor. At the time of his death in 2010, Gosa left an estate, consisting of both realty and personalty, valued at \$11 million.

The executors of Gosa’s Will have now raised a grant of probate from the court. In carrying out their executorial duties, the executors have uncovered the following outstanding liabilities of Gosa’s estate:

- (i) \$2,500,000 representing one year’s income tax and other taxes;
- (ii) \$3,800,000 in total owing to various dealers in construction material, for supplies delivered to G & S;
- (iii) \$260,000 owing to Print All, a publishing business, for printing programmes distributed at Gosa’s funeral service;
- (iv) \$150,000 representing wages and other benefits owing to employees of G & S;
- (v) \$6,500,000 owing to D C Bank, arising from a mortgage loan issued on the security of Gosa’s residence;
- (vi) \$90,000 owing to J. B. Black, for supplying and mounting an engraved tombstone at Gosa’s burial plot; and
- (vii) \$700,000 owing to Chris Evan, Gosa’s hiking partner, for a loan made to cover the cost of emergency roof repairs at Gosa’s residence.

Advise the executors as to the options open to them for dealing with the debts of Gosa’s estate, as well as the distribution of the assets.

QUESTION 8

Alan Birk, a citizen of your jurisdiction, executed a Will in 2004 in which he named Don Forr as the sole executor. The entire estate is gifted to his favourite cousin, Gary Hayl, who is an adult.

Birk died in May 2015, leaving both real and personal estate valued at \$7.5 million. Forr now lives permanently in Melbourne, Australia, and although he has no personal objection to administering Birk's estate, he is daunted by the prospect of having to act from such a distance. He would therefore prefer to authorise his lifelong friend, Jay Kato, who resides in your jurisdiction, to carry out this function on his behalf.

Forr contacts you, seeking guidance as to the steps he needs to take to facilitate the administration of Birk's estate.

- (i) Advise Forr as to the practice and procedure to be followed in the circumstances outlined.

(DO NOT include any step or action subsequent to the issuing of the relevant grant of representation).

- (ii) Detail the essential contents of the Oath (or other appropriate document corresponding to an Oath) to lead the relevant grant of representation to Birk's estate.

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