

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2010

PROBATE PRACTICE AND PROCEDURE

(LAW OF SUCCESSION)

(MONDAY, MAY 17, 2010)

Instructions to Students

- (a) Time: 3 ½ 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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In February 2005, two weeks before his second marriage, Winston Dwyer died leaving realty valued at \$4,000,000 and personalty valued at \$6,000,000, including personal chattels valued at \$3,000,000. For eight continuous years up to his death Winston had shared a common-law relationship with Virginia, his childhood “muse” and fiancé.

Winston though separated from his wife, Myrna, for nine years, was not divorced until April 2004, finally succumbing to Virginia’s persistent pressure. He left two adult children (nineteen year-old twins Mitsy and Rudolph) from his marriage to Myrna and a seven year-old child, Precious, whose mother is Virginia.

Advise Virginia as to -

- (i) the distribution of the estate;
 - (ii) the type of grant which is relevant; and
 - (iii) the person(s) entitled to apply for the said grant.
-

QUESTION 2

Phyllis Smart made her will on March 14, 1998, two weeks before she died suddenly from a heart attack. She left an estate valued at \$8,500,000. The executors appointed by the will were her husband Barry and her adult son Jerome. The estate is to be shared

equally among the beneficiaries under the will namely Barry, Jerome and Phyllis's only other child, Simone, who is also an adult.

Barry died in 1999 without lifting a finger to administer the estate and Jerome has told Simone recently that he does not intend to apply for probate of his mother's will as he is ***"...in mourning for life"***. He has agreed to renounce his executorship so that Simone can administer the estate.

- (i) List the documents to be filed in support of the application for the relevant grant of representation; and
 - (ii) detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.
-

QUESTION 3

In January 2001, Thelma Whyte, a widow, disappeared while on vacation in Europe when her aircraft, covered with volcanic ash, crashed over the Atlantic. Her body was never found and she has not been seen since. She had made a will in 1997 leaving her estate, valued at \$10,000,000 to her two adult children, Frederick and Danielle, equally. The sole executor under the will is David Gray who, after living abroad for some years, has returned to the jurisdiction and wants to wind-up Thelma's estate.

- (i) Advise David as to the relevant grant to be issued and the practice and procedure to complete the administration of the estate.

- (ii) Detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.
-

QUESTION 4

Eli Jones, blind since birth, decided to make a will on May 4, 2006 and invited two of his co-workers, Melvin James and Titus Levin, to his home to help him with the will and to witness his signature. In Eli's presence, Melvin wrote the two-page will exactly as Eli dictated it and Titus signed the will for Eli, writing "***T. Levin for E. Jones***" on the second page of the will. Melvin then witnessed the will on the first page and Titus witnessed it on the second page. Both men are also the executors. The will was not read back to Eli. There is no date or attestation clause.

Maria, Eli's daughter and only living relative, is the sole beneficiary under the will. She saw the will in Eli's study on May 5, 2006 and upon reading it smiled and signed her name at the bottom of the second page.

Eli died in July 2008 and the executors, after getting legal advice, have told Maria that there are some problems with the will.

Advise Maria on the various matters including the validity of the will and any bequest thereunder.

QUESTION 5

Tina Feigh, a successful architect, made a will in 2003 leaving everything she had to her fiancé, Guy Wilcox. The sole executor under the will was her business associate Glendon Bowes. In 2004 she discovered that Guy had cheated on her and, after confronting him, crushed up the will in his presence and threw it in the rubbish bin. She left the house and told him to leave before she returned. Guy retrieved the will, packed and left.

In January 2006, Tina made a new will leaving everything to her only living relative Devon Feigh, her brother, who is also the executor. There is no revocation clause in this 2006 will.

Tina died in a car accident in early 2009 and Guy now claims that he is entitled to Tina's estate valued at \$12,000,000.

Advise Devon as to the distribution of the estate.

QUESTION 6

Anthony Scales died on August 11, 2004, leaving a will dated October 18, 1999, in which his entire estate valued at \$7,800,000 was left to his wife, Pamela, and his only child Timothy born in 1997. Both executors under the will predeceased Anthony in 2003 after their yacht capsized during a regatta. Pamela wants to wind up Anthony's estate.

- (i) Advise Pamela as to the relevant grant to be issued and the practice and procedure to complete the administration of the estate.
 - (ii) Detail the contents of the Oath (or other appropriate document corresponding to an Oath) to lead the grant.
-

QUESTION 7

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

QUESTION 8

Cynthia Bruce, a native of your country, migrated to England when she was twenty years old and became a British citizen. She studied extensively in Europe and wrote a number of books on anthropology. She died in June 2006, leaving personal estate valued at \$5,000,000 in England and real estate valued at \$6,000,000 in your country.

Her sole surviving relative and the only beneficiary under her 2002 will is her only child, Winsome Bruce-Tweed, who is also her executrix. Winsome obtained a grant of probate in England and now wishes to take the necessary steps to administer the estate in your country.

Advise Winsome as to the steps to be taken to achieve her objective, summarising the contents of the document(s) to be filed in support of the relevant application(s).
