

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2011

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 16, 2011)

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

Devon Hutchinson, a native of your country, migrated to Australia in 1988 and died on September 2007, leaving property in Australia, the USA and in your country. On August 12, 2009, a grant of probate was issued in Australia to Garth Spieler, the testator's sole executor, who resides in Queensland, Australia where he operates a chess club.

Spieler now wishes to take the necessary steps to administer the remainder of Devon's estate outside of Australia, including property in your jurisdiction valued at \$4,000,000, and comes to you for advice.

Advise Spieler as to the steps to be taken to achieve his objective and list the document(s) to be filed in support of the relevant application(s).

QUESTION 2

Franklyn Bennett died in July 2009 from a severe case of stress as he watched his furniture business dwindle as a result of the global recession. He left real property valued at \$5,500,000 and personalty valued at \$2,400,000. His liabilities amounted to \$10,000,000 including a mortgage debt to Build-Them-Quick Limited of \$4,000,000 (secured on the said real property) and various unsecured debts totaling \$6,000,000.

- (i) Advise the unsecured creditors how the estate may be administered and what steps they have to take to recover their debts.

- (ii) List the order of resorting to assets to clear debts when an estate is solvent.

QUESTION 3

By his Will dated February 23, 1997, Theo Creary appointed his sister Fiona and his architect, Miriam Gravey, as his executors and left his entire estate valued at \$9,000,000 to his childhood friends Janet Whistler, Nyron Smart and David Tyrell, equally.

In June, 1998 Theo made a Codicil leaving *“my motor car”* to his high school English teacher Hazel Palmer. The Codicil contains a revocation clause and was witnessed by Janet and Nyron. In 2006, Theo sold the Suzuki motor car and bought a Toyota Crown motor car.

In February, 2011 Theo prepared a handwritten Codicil leaving the Toyota Crown and his music equipment to Alfred, his business partner, but before he could sign the document he had a heart attack and died.

Fiona and Miriam visit your chambers for legal advice regarding which document is to be admitted to probate and how the estate is to be distributed.

Advise them.

QUESTION 4

By her Will dated June 20, 2006, Stephanie Williams appointed Brian Drury and Simon Spencer as her executors and left her entire estate valued at \$4,000,000 to her brother Philip, her only living relative, and his wife Genevieve. Stephanie died in October 2008 and Brian obtained a grant of probate in 2009, discharged the liabilities of Stephanie’s

estate and was just about to start distributing the assets when he died intestate in February 2010.

In October 2010 Simon told Philip that he was migrating and renounced his executorship. Philip and Genevieve want to complete the winding-up of Stephanie's estate and come to you for advice.

- (i) Advise them as to the practice and procedure to wind up Stephanie's estate.
- (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 5

Anisha Barrow, a widow, died intestate on March 21, 2003 leaving a net estate valued at \$3,000,000. Her only child, Phyllis, who is an adult, obtained a grant of letters of administration in her mother's estate. Phyllis died in 2007, also intestate and a widower, without completing the winding-up of Anisha's estate. She left adult twins Merrick and Murray as her only living relatives. The estate left by Phyllis is essentially the property she inherited from her mother, Anisha.

- (i) Advise Merrick and Murray as to the relevant practice and procedure for them to wind up Anisha's estate.
- (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant in Anisha's estate.

QUESTION 6

On October 21, 2007, Joseph Matthews, a widower, died leaving a Will dated May 12, 2001. He appointed Felix Smith and Marcia Browne as his executors and left his entire estate valued at \$3,500,000 to his only child Deborah, an adult. The executors wish to administer the estate and come to you for legal advice.

- (i) Advise them as to the practice and procedure to wind up the estate.
- (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 7

On April 11, 2007, Trevor Bright, a widower, died leaving a Will made in 1999 naming his only child, Winston, born in 1997, as the sole executor and sole beneficiary of the \$5,000,000 estate.

Winston's legal guardians are his uncle and aunt Thomas Bright and Mary Bright, Trevor's brother and sister. They want to obtain a grant on Winston's behalf to assist with his educational expenses.

- (i) Identify the relevant grant to be obtained and list the documents to lead the grant.
- (ii) Detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 8

Marcus Bumwell died intestate on December 19, 2010 as a result of a motor vehicle accident. He left a net estate valued at \$9,000,000 including personalty and realty. Various items of the said personalty, with a total value of \$2,000,000, were used primarily by Marcus in his carpet cleaning business. At the time of his death Marcus had been married for 18 years to Jessica but the couple had been separated since February 2004 after many arguments and fights. The marriage produced two children Shelley and Milly, both adults.

Two months after his separation from his wife, and right up to his death, Marcus had established common law unions with Katrina Green and Mavis Banton, each of whom had a child for him in 2007. Jessica insists that the estate belongs to her and the children of the marriage and consults you for legal advice.

Advise Jessica as to:

- (i) the distribution of the estate; and

 - (ii) the practice and procedure to wind up the estate.
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