

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2012

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 14, 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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

By her will dated February 12, 2007, Jessica Jones appointed Dennis Quixote and Frank Gooden as her executors. She left her entire estate valued at \$5,600,000 to her two children, Wayne and Cynthia, in equal shares. Jessica died a widow in July, 2009 and Dennis died in August, 2009, ignorant of the fact that Jessica had appointed him as one of her executors.

Frank is serving a thirty-year sentence for murder. Wayne and Cynthia wish to administer their mother's estate and consult you.

- (i) Advise them as to the type of grant for which they can apply in order to achieve their objective.
 - (ii) Assuming that Wayne and Cynthia will make the relevant application, detail the contents of the Oath (or other document corresponding to an Oath) to lead the relevant grant of representation.
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QUESTION 2

Trevor Brubank died intestate on February 28, 2009 as a result of a motor vehicle accident. He left a net estate valued at \$4,500,000 including personalty and realty. At the time of his death he had been married for twenty years to Janice Brubank but the couple had been separated since April 2003, after Janice left the matrimonial home unhappy with what she called Trevor's "*flirtatious ways*".

In January 2004, Trevor established a relationship with Tellesha Green and they were living happily together at his death. They have a child, Dominique, who was born in 2006. Mary, Tiffany, Deborah and Shreyas, all of whom are under eighteen years, are Trevor's four children with Janice. After Trevor's death Janice insists that his entire estate should belong to her and her children. Tellesha insists that she and Dominique should get a share of Trevor's estate.

Advise Tellesha as to:

- (i) the distribution of the estate; and
 - (ii) the practice and procedure to wind up the estate.
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QUESTION 3

Dana Simpson made a will in 2002 appointing Andrew Sharp and Violet Swift as her executors. She left her entire \$4,000,000 estate to her husband, Philemon, and their three children, Susan, Kaydian and Kevron.

In 2004, Dana made another will appointing her best friend, Gloria Douglas, as executrix and giving her Austin Mini motor car to her gym instructor, Rufus Lane. In 2007, she became a Rastafarian and made a third will leaving her entire estate to a charity called "*Selassie Kingdom*". The 2004 and 2007 wills had no revocation clauses.

After prolonged bouts of depression at the government's refusal to legalise ganja (which she called "*Jah Jah panacea*") Dana died in 2010. Philemon and the children believe that Dana had

been insane for some time, as since 2006 she had hardly spoken to anyone and for several hours each day kept chanting “*More fire, bless rasta*” in a trance-like state.

Advise Philemon and the three children as to which of the wills or clauses is valid and give reasons for your answer.

QUESTION 4

Stephanie Mallett, a widow, died testate on January 28, 2011. A few months before she died, Stephanie had left the original copy of her will dated August 6, 2006 with her lawyers, *Stern Legal Representation & Company*, for safe-keeping. A few months after her death, during the hurricane season, a powerful storm caused flooding and an electrical fire and many buildings were seriously damaged including the offices of *Stern Legal Representation & Company*.

Jonathan Stern, the senior partner of *Stern Legal Representation & Company* who had prepared Stephanie’s will, reluctantly admitted to the executors, Frank Gray and Sharon Whyte, that the will was apparently destroyed as it could not be found. He, however, has on his home computer an exact, unsigned copy of the will that was signed by Stephanie. Peter and Marlene, Stephanie’s two adult children and the sole beneficiaries of the \$4,000,000 estate, want the executors to wind up the estate.

- (i) Advise the executors as to the practice and procedure to give effect to the deceased’s will as contained in the unsigned copy.

- (ii) Assuming the executors are successful with the necessary preliminary application, detail the contents of the Oath (or other document corresponding to an Oath) to lead the grant.

QUESTION 5

In 2006 Wilbur Groves, a widower, died leaving a will made in 1999 in which his only children, Jeremiah and Shalman (then minors) were appointed executors and the sole beneficiaries of the \$5,000,000 estate.

In 2008 Stephen and Molly Waite, the legal guardians of the children, had obtained a grant of representation in Wilbur's estate on behalf of the children but are still to complete the winding-up. The children, now adults, wish to obtain a grant in Wilbur's estate in their own right.

- (i) 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.
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QUESTION 6

Aloysius Street died in 2009 at 84 years of age leaving the following assets:

- (a) several bank accounts worth \$2,000,000 in total;
- (b) an insurance policy valued \$3,000,000 with "Estate" as the beneficiary; and
- (c) his house at Nirvana Mews worth \$10,000,000.

Under his 1998 will, Street made the following dispositions:

- “(a) I give my house at Nirvana to my two children, Courtney and Ouida, free of any mortgage or other obligation;
- (b) I give the sum of \$1,000,000 to my friend and accountant Richard Rose; and
- (c) I give the residue of my estate to my best friend Darion Stone.”

In addition to the above-stated assets, the residue includes personalty valued at \$1,000,000 and realty valued at \$2,000,000.

Street had the following debts:

- (a) mortgage balance on the house at Nirvana Mews of \$7,000,000;
- (b) a Promissory Note for \$2,000,000;
- (c) credit card balances totaling \$1,500,000; and
- (d) funeral and related expenses of \$1,000,000.

Richard Rose pre-deceased Street leaving two children, Neville and Denise.

Advise the executor, Jaime Givens, as to the payment of the various debts and the distribution of the estate.

QUESTION 7

Wilma Redknapp made a will on September 18, 2007, leaving her \$2,500,000 estate equally to Donald, her husband and the sole executor, and their only children, Amari and Rachel, both adults. Wilma died in 2008 and Donald obtained a Grant of Probate but died intestate in 2010 just after he had settled the estate's liabilities.

Amari and Rachel come to you for advice to complete the winding-up of Wilma's estate.

- (i) List the documents to be filed in support of the application for the relevant grant of representation.

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

QUESTION 8

In 1962, Dunstan Hannen migrated to Winnipeg, Canada, as a toddler. In Canada he established a successful recording studio. He died in October 2008, leaving an estate worth \$9,000,000 including property in Canada, England, the United States of America and your country.

His executors have obtained a grant of probate in Canada and now wish to take the necessary steps to administer the estate in your country valued at \$2,500,000.

- (i) Advise his executors as to the steps to be taken to achieve their objectives.

- (ii) List the document(s) to be filed in support of the relevant application.

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