

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2015**

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 11, 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.
- (f) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Fidel Java made a Will in 2012, appointing three adult executors thereunder: Clara Mann, Diane Izer and Barry Stot.

Under Java's Will, his estate is divided among his wife Helen and their two sons, Tim and Val, who are aged 10 and 12 years respectively.

Fidel Java died in October 2014, leaving a \$12 million estate. All the beneficiaries under the Will have survived him, as also Mann and Stot. However, Izer predeceased Java, having succumbed to cancer in late 2013.

- (i) State which type of grant of representation to Java's estate would ordinarily be applied for, assuming the relevant party/parties is/are willing to proceed, and identify the principal details to be included in the Oath (or other appropriate document corresponding to an Oath) to lead the grant of representation to the estate.

- (ii) Assume that Izer has survived Java, instead of predeceasing him. Izer is slated to undergo a course of physiotherapy treatment for a serious injury, and is not expected to be in a position to assist with administration of the estate until the end of 2015.

On these modified facts, would your answer to (i) be any different, and if so, **briefly** state in what respects.

QUESTION 2

Bruce Soal, a successful businessman, operated a well-known hardware store, Nails and More ("N & M"). He died in February 2015 without having made a Will.

Bruce's \$25 million estate comprises the following:

- (a) one-third interest in a beachfront lot of land held as tenant-in-common with his lifelong friends, Jon and Tom;
- (b) an absolute interest as sole proprietor of an upscale townhouse;
- (c) 10,000 shares in Get a Life Limited, a private company;
- (d) two vintage Alfa Romeo motor cars;
- (e) assorted equipment associated with N & M;
- (f) a 2012 Toyota Hiace delivery van used in connection with N & M;
- (g) household furnishings and intimate personal items;
- (h) an extensive collection of novels and other literary works by the Caribbean/UK author, V.S. Naipaul;
- (i) several accounts at Lo Fees Bank; and
- (j) a savings account at Homely Building Society.

Bruce is survived by his widow, Vie, to whom he had been married for 25 years. For seven years immediately preceding his death, however, Bruce had been involved in a visiting relationship with Mia Bayt, while continuing to live in the matrimonial home with Vie.

Also surviving Bruce are his two children: Katy, born in wedlock; and Luke, born from the relationship with Mia. Both Katy and Luke are adults.

Bruce's parents, Mike and Alice Soal, are also alive.

Vie now consults you for advice concerning the administration of Bruce's estate.

Advise Vie as to the type of grant of representation to Bruce's estate which should be applied for, and the distribution of assets amongst his beneficiaries, citing relevant legislation.

You are to assume that all the abovenamed assets are available for distribution to beneficiaries.

QUESTION 3

Winsome Ivee, a middle-aged hairdresser, decided to make a Will on January 6, 2010, gifting her entire estate to her two children, Gary and Mel.

Ivee printed the one-page Will, which began with the words "I, WINSOME IVEE," and ended with the distribution of her estate to her two children. The remainder of the page, at this stage, was blank.

Aware that she would need persons to witness her signature, Ivee went to the home of her close friends, Anne Trey and Lana Sibb, who are sisters. With both Trey and Sibb present, Ivee produced the Will. She inserted the date below the dispositions to her children, and then wrote the words "Precious Ivee" immediately below the date.

"Precious" was a longstanding nickname used within Ivee's circle of family and close friends to refer to her.

Trey then inserted the words “SIGNED before us both” immediately below the words “Precious Ivey”, and added her own signature (“A. Trey”) underneath the clause she had just inserted.

Trey passed the Will to Sibb, who placed her own signature (“L. Sibb”) next to Trey’s. The signatures of Trey and Sibb were inserted in the presence of Ivey.

Ivey died in March 2015 leaving an estate worth \$11 million. Both Trey and Sibb are alive.

The executor under Ivey’s Will of January 6, 2010 seeks your assistance in obtaining a grant of probate.

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

QUESTION 4

Earle Burr, a widower without children, executed a home-made Will in 2006 in which he gave his entire estate to his sister, Lisa Gall, absolutely.

In 2013, Burr executed another home-made Will in which he gifted his entire estate to his lover, Sara Nalo, absolutely. Clause 2 of this Will read: “I HEREBY REVOKE all previous Wills and testamentary instruments made by me.”

In early 2014, the relationship between Burr and Nalo began to deteriorate sharply. In August 2014, he confided in his business partner that his relationship with Nalo was “practically finished”, and that he would be making a new Will under which she would receive nothing.

Burr ended the conversation with the business partner with the comment: “But I have to see a lawyer first – I must make sure the new Will is professional.”

Burr died in January 2015, without either having consulted a lawyer or having made another Will. Both the 2006 and 2013 Wills were discovered after Burr’s death at his home, in a hidden compartment containing other important documents.

The 2006 Will is intact, but the entire text of the 2013 Will is so marked through with black ink that it is impossible to discern what was written on the document. An authentic copy of the 2013 Will is, however, available.

The executors under the 2013 Will seek your advice as to the validity of both the 2006 and 2013 Wills.

Advise the executors accordingly.

QUESTION 5

Titus Quik, an affluent architect, executed his Will in May 2009. At that date, Quik owned the following assets:

- (a) a luxurious townhouse (“Emerald”) in the capital city;
- (b) a beachfront villa (“Spree”) in the rural area;
- (c) a 2008 Mercedes Benz motor car;
- (d) a private jet stationed at the local aerodrome;
- (e) a collection of rare prints from the Asian impressionist artist, Yap Leo;
- (f) shares and other investments;
- (g) several bank accounts; and
- (h) a wide range of household furniture and intimate personal items.

In his Will, Quik disposed of his assets as follows:

- (i) the townhouse, “Emerald”, to his twin sister, Ida, absolutely;
- (ii) the beachfront villa, “Spree”, to his sons, Igor and Rory, in equal shares absolutely;
- (iii) the Mercedes Benz motor car to his daughter, Tami, absolutely;
- (iv) the private jet to his son, Rory, absolutely;
- (v) all the shares and investments to his son, Igor, absolutely; and
- (vi) the residue of his estate to his wife, Rita, absolutely.

In April 2014, Quik flew his private jet to a nearby island to attend a friend’s special birthday celebration. The jet was stolen on the trip and has not been recovered.

Quik died in October 2014, and is survived by his wife Rita, and his adult sons, Igor and Rory. Both Quik’s sister, Ida, and his daughter, Tami, predeceased him. Tami’s son, Marc, who survived her, died of a rare disease in November 2013. Marc was childless.

The executors of Quik’s Will have obtained a grant of probate of the Will. They now seek 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 executors as to the distribution of the gifts.

QUESTION 6

At the time of his death in 2012, Jeff Diet left an estate, consisting of both realty and personalty, valued at \$16 million. Diet had been the operator of Shape Up Gym, a popular health club, as a sole proprietor.

The executrix of the Will, Elissa Kams, recently raised a grant of probate from the court. In carrying out her executorial functions, Kams has discovered the following outstanding liabilities of Diet's estate:

- (i) \$4,200,000 in total owing to various suppliers of gym equipment in Atlanta in the United States, for equipment delivered to Shape Up Gym;
- (ii) \$3,750,000 representing one year's income tax and other taxes;
- (iii) \$300,000 owing to a funeral home for services in relation to Diet's funeral;
- (iv) \$250,000 representing salary and other benefits owing to personal trainers and other employees of Shape Up Gym;
- (v) \$80,000 owing to the caterers for services provided at Diet's funeral reception;
- (vi) \$750,000 owing to a friend, for a loan made to Diet during a period of severe financial difficulty; and
- (vii) \$9,000,000 owing to Smart Building Society, arising from a mortgage loan issued on the security of Diet's townhouse.

Advise Kams as to the options open to her for dealing with the debts of Diet's estate, as well as the distribution of the assets.

QUESTION 7

Jason Stir was born in your jurisdiction but moved to Ontario, Canada, as an infant when his parents migrated there. He grew up in Canada, married, raised a family and operated a business there.

However, Stir never forgot his Caribbean roots, and returned periodically to the local jurisdiction, investing in real estate and securities.

At the time of his death in 2013, Stir had real and personal estate in both Canada and the local jurisdiction. In October 2014, his executor, Chris Vale, who is domiciled in Canada, obtained a grant of probate of Stir's Will in Canada.

Vale now wishes to take the necessary steps to administer the assets left by Stir in the local jurisdiction.

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

QUESTION 8

Under Earl Leap's Will of 2010, he appointed Marva Owel and Neil Jobs, both adults, as his executors. Leap's entire estate is gifted to his sister, a widow.

Leap died in July 2013, leaving an \$8 million estate, comprising realty, shares and other personalty. Jobs, who was elderly, had no objection in principle to assuming duties with respect to the administration of Leap's estate, but declined at the time to join in the relevant application.

Accordingly, Owel proceeded on her own and in May 2014 obtained the relevant grant of representation to Leap's estate from the court.

Owel started to administer the estate, properly paying debts and transferring the realty to the beneficiary under the Will. However, over the last few months, Owel has been experiencing excruciating pains in her lower back. Her medical adviser has recommended surgery, and it is now clear that she cannot continue with the administration of the estate at this time. The shares and other personal property have not yet been transferred.

Jobs now attends your office expressing a willingness, in the circumstances, to complete the administration of Leap's estate.

- (i) Advise Jobs as to the type of grant for which he may apply, and the necessary documents and procedure in relation thereto.

- (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.

END OF PAPER

