

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS, OCTOBER 2014

PROBATE PRACTICE AND PROCEDURE

(OCTOBER 2, 2014)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Bev Mear, Don Rest and Lena Awl were appointed executors under the Will of Stacy Hur, which was executed in 2008. Paul Jar and Gina Wim were named as the beneficiaries under the Will.

Awl died in a freak accident in November 2012. Hur died in April 2014, leaving an estate worth \$7,000,000.

Mear and Rest now seek your advice concerning the administration of Hur's estate.

- (i) Advise Mear and Rest as to the usual practice and procedure to facilitate the administration of Hur's estate.

- (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.

QUESTION 2

In October 2011, Barry Tone decided to make his Will. Tone was illiterate, and asked two friends, Liam Wise and Ari Mont, to assist with the preparation and execution of the Will.

Wise and Mont arrived together at Tone's home. In Mont's presence, Tone dictated to Wise his testamentary wishes, which Wise recorded in ink on a sheet of paper. Wise then read over the Will to Tone, who thereafter expressed his approval.

Tone then made an "X" at the end of the Will, and both Wise and Mont added their signatures immediately below Tone's mark.

Ann Cent, Tone's cousin, was also present during the entire process of preparation and execution of the Will.

Tone died on March 20, 2013. Both Wise and Mont are also now deceased. Cent is still alive.

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

- (i) Briefly state the legal issue(s) that arise from the observations you have made;

(DO NOT analyse or expound on the law relating to these issues.)

- (ii) Citing relevant laws (if any), advise the executors of any affidavit(s) that is/are required to be filed in the Supreme/High Court to address the issue(s) identified under (i); and
- (iii) Detail the essential contents of the affidavit or principal affidavit ONLY, to be filed in court under (ii), indicating the person who will execute it.

QUESTION 3

Milburn Tott, an affluent businessman, executed his Will in February 2009. At that date, Tott owned the following assets:

- (a) a mansion at 30 Greco Avenue;
- (b) a 2008 Lexus motor car;
- (c) a luxury yacht moored at the downtown marina;
- (d) a warehouse in the town centre;

- (e) shares and other investments;
- (f) several bank accounts; and
- (g) a wide range of personal effects.

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

- (i) the mansion at 30 Greco Avenue to his wife, Raya, and mother, Lass, equally and absolutely;
- (ii) the 2008 Lexus motor car to his son, Tory, absolutely;
- (iii) the luxury yacht to his daughter, Pala, absolutely;
- (iv) the warehouse to his three children, Tory, Pala and Bob, equally and absolutely; and
- (v) the residue of his estate to his wife, Raya, absolutely.

In summer 2012, the luxury yacht was destroyed when a tropical storm swept through the jurisdiction.

Tott died in April 2014, and is survived by Raya, Lass, and his adult children Pala and Bob. Tory predeceased his father (in January 2012), but his (Tory's) adult daughter, Zara, who survived him, died in a motor vehicle accident in December 2013. Zara was childless.

The executors of Tott's Will have obtained a grant of probate of the Will. They now consult you for advice 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 4

Joe Nave made a Will in 2007 in which he devised his apartment at Calm Springs to his sister, Maud Vies, and gave the residue of the estate to his nephew, Ian Sopp.

In 2012, Nave made another Will in which he devised all of his realty to his friend Burt Down, and gifted the residue of the estate to a local orphanage.

The 2012 Will contained no express revocation clause.

At the time of his death in January 2014, Nave owned the following assets:

- (a) the apartment at Calm Springs;
- (b) two townhouses in a rural district; and
- (c) a wide range of personal property.

Both the 2007 and 2012 Wills were found in Nave's safe among his important documents. The 2007 Will was intact, but the entire text of the 2012 Will was struck through in red ink.

The executors under the 2012 Will attend your office seeking advice as to the validity of both the 2007 and 2012 Wills.

- (i) Advise the executors 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).

QUESTION 5

- (i) In 2009, Alan Pact made a Will appointing his friends Bea Trix and Cal Dude as his executors. Pact's relative, Dave Early, is the sole beneficiary under the Will.

Pact died in October 2013, leaving a \$9,000,000 estate. Dude has been living as a permanent resident in Washington, D.C. in the United States for the past thirty years.

Trix attends your office seeking guidance as to steps that may be taken to administer Pact's estate. She instructs you that Dude is not opposed in principle to serving as an executor. However, because Dude is not resident in the local jurisdiction, he is not keen on administering the estate from a distance.

In these circumstances, **briefly** indicate to Trix the course of action that would ordinarily be taken to obtain a grant of representation to Pact's estate.

- (ii) Assume that a grant of representation to Pact's estate has been made in accordance with your guidance under (i), and that the estate is currently being administered. Further, assume that Dude has recently returned to the local jurisdiction to live, and now desires to take an active part in completing the administration of Pact's estate.

Advise Dude as to type of grant of representation to Pact's estate for which he can apply AND state the principal details to be included in the Oath (or other appropriate document corresponding to an Oath) which will have to be filed in court.

QUESTION 6

At the time of his death in 2013, George Sams left an estate, consisting of both realty and personalty, valued at \$15,000,000. Sams had been the operator of a popular electronics store ("Compu Ex") as a sole proprietor.

The executrix of the Will, Ana Liy, recently extracted a grant of probate from the court. In carrying out her executorship functions, Liy has discovered the following outstanding liabilities of Sams's estate:

- (i) \$2,800,000 in total owing to several electronics distributors in Miami in the United States, for computers and other equipment supplied to Compu Ex;
- (ii) \$3,000,000 representing one year's income tax and other taxes;
- (iii) \$200,000 owing to a funeral home for services carried out at the funeral;
- (iv) \$180,000 representing unpaid salary to some employees of Compu Ex;
- (v) \$500,000 owing to a friend, for a loan made to cover school tuition fees for Sams's daughter; and
- (vi) \$10,500,000 owing to Rite Building Society, arising from a mortgage loan issued on the security of Sams's apartment.

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

QUESTION 7

Wint Mack executed his Will in 2006, appointing Clair Sera and Gary Huoy as his executors. The estate was divided between Mack's two adult children, Abe and Jay.

Mack died in November 2013, leaving an estate worth \$14,000,000.

Sera died in May 2014, and Huoy formally renounced his executorship last month.

Abe and Jay attend your office seeking advice on the steps to be taken to administer their father's estate.

- (i) Advise Abe and Jay as to the usual practice and procedure to facilitate the administration of Mack's estate.

- (ii) Detail **five** essential matters to be included in the Oath (or other appropriate document corresponding to an Oath) you intend to file in court to lead the grant of representation to the estate. Your answer must reference the relevant exhibits.

QUESTION 8

Fitz Baye died intestate in May 2014, leaving a net estate comprising both realty and personalty, valued at \$13,000,000.

Baye had been married for many years to Rhea, but almost from the beginning of the marriage he had been intimately involved with Eva Tarr, a spinster. In 2007, Baye left the matrimonial

home to cohabit with Tarr, an arrangement which continued up to the time of his death. No divorce or judicial separation proceedings were ever instituted between the Bayes.

Baye is survived by Rhea, Tarr, and two children: Josh and Kay, both minors, and offspring of the relationship with Tarr.

Baye had one other child, Sara, the offspring of the marriage to Rhea. Sara, however, predeceased Baye, leaving an adult child, Ken, who is still alive.

Rhea now consults you for legal advice concerning the distribution of Baye's estate.

Advise Rhea as to the manner in which Baye's estate should be distributed, citing relevant legislation.

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