

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

**LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS 2014**

**PROBATE PRACTICE AND PROCEDURE**

**(AUGUST 12, 2014)**

**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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **QUESTION 1**

- (a) Aston Milla prepared his Will and added his signature at the end of the document. Then, remembering that he needed to have witnesses to subscribe the Will, he asked Dave Till and Emerson Greg, two members of a church committee which he chaired, to come to his home to attest the Will.

Till arrived shortly before Greg. Milla led him into the kitchen, nodded towards a large envelope on a table, and exclaimed: "That's it!". Milla then removed the Will from the envelope, being careful to cover the dispositive parts of the Will so that Till could not see the contents. Milla's signature, however, was visible. Till signed below Milla's signature, and went across to the refrigerator for some refreshment.

Just then, Greg arrived, and Milla gestured towards the Will on the table. Greg then added his signature beside Till's.

Advise whether Milla's Will was properly executed, giving reasons.

- (b) Chris Pall made his Will in 2008, dividing his entire estate between his sister, Tara Drew, and a local charity.

At the time of execution, Pall signed at the end of the Will in the joint presence of May Clay and John Hye, who then placed their signatures below Pall's, in Pall's presence.

Drew was also present at the time of execution. Shortly after Clay and Hye had signed the Will, Hye suggested to Drew that she should also sign, to give what he called "added weight" to the

Will. After some hesitation, Drew then added her signature beside the signatures of Clay and Hye.

Identify the legal issue(s) that arise on these facts, and the manner in which a court is likely to rule in the circumstances.

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## **QUESTION 2**

Mary Byrd and Abe Lin were appointed executors under the 2006 Will of Keith Rely, who died in November 2012, leaving an estate worth \$10,000,000. Zara Err is the sole beneficiary under the Will.

Byrd formally renounced her executorship in March 2014.

Lin now consults you concerning the administration of Rely's estate.

- i) Advise Lin as to the usual practice and procedure to facilitate the administration of Rely'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.
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### **QUESTION 3**

Steve Kape died intestate in April 2014, leaving a net estate consisting of both realty and personalty, valued at \$17,000,000.

Kape had married Dee West ("Dee") some decades earlier, but in March 2006, Kape entered into an intimate relationship with Fay Loy, who was a divorcee. Kape left the matrimonial home at that time, and he and Loy cohabited together up to the time of his death.

Dee, Kape's wife, died in 2011. No divorce or judicial separation proceedings had been instituted between the Kapes.

Kape is survived by Loy, and three children: Ian, an adult, who was born from the marriage to Dee; and Luke and Pat, who are four and six years old respectively, and offspring of the relationship with Loy.

There was another child, Gus, who was an offspring of the marriage between Kape and Dee. Gus, however, predeceased Kape, leaving an adult child, Tom, who is still alive.

Ian has always disliked Loy since the first time that he became aware of her relationship with his father. He now attends your office seeking legal advice concerning the distribution of Kape's estate.

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

#### **QUESTION 4**

Beth Eyle made a Will in 2009 in which she devised her apartment at Placid Close to Gina Lynn absolutely, and gifted the residue of her estate, both real and personal, to Kess Quin absolutely.

In 2011, Eyle made another Will in which she devised her Placid Close apartment to Nora Rapp absolutely. There were no other dispositions under this Will.

The 2011 Will had no express revocation clause.

At the time of her death in October 2013, Eyle owned the following assets:

- (a) the apartment at Placid Close;
- (b) a townhouse at Top Square; and
- (c) a wide range of personal property.

The 2009 Will was found after Eyle's death, intact, along with other important documents, in Eyle's heavy-duty safe. However, the 2011 Will has not been found, even though it was last seen, before Eyle's death, in the same safe. Copies of the 2011 Will are available.

The executors under the 2011 Will attend your office seeking advice as to the validity of both the 2009 and 2011 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).
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### **QUESTION 5**

Toby Murr executed his Will in September 2011. At that date, Murr owned the following assets:

- (a) a house at 10 Homer Road, in the capital city;
- (b) a freshwater-fish farm at Providence in a rural area;
- (c) equipment and supplies associated with the fish farm;
- (d) a 2008 Honda Accord motor car;
- (e) a 2010 Toyota RAV 4 motor car;
- (f) investments in XYZ Government bonds;
- (g) several bank accounts; and
- (h) a wide range of household furnishings and personal effects.

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

- (i) the fish farm at Providence, as well as all associated equipment and supplies, to his two adult sons, Mark and Wole, in equal shares absolutely; but in the event that either Mark or Wole predeceased him, that child's share would go to Murr's cousin, Ella Nuy, absolutely;
- (ii) the 2008 Honda Accord motor car to Nuy absolutely;
- (iii) the 2010 Toyota RAV 4 motor car to his uncle, Val, absolutely;
- (iv) the investments in XYZ Government bonds to his uncle, Val, absolutely; and
- (v) the residue of his estate absolutely to Rita Lue, with whom he was involved in a common law relationship,.

In July 2013, Murr's 2010 Toyota RAV 4 motor car was stolen from a shopping complex, and has never been recovered.

Murr died in January 2014, and is survived by Lue, Mark, Nuy and Val. Wole predeceased his father, but was survived by his (Wole's) adult son, Carl, who is still alive.

The executors of Murr's Will have extracted 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 have already been provided for, and that the assets forming part of the estate are as indicated above, advise the executors as to the distribution of the gifts.

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## **QUESTION 6**

- (i) Faith Jure executed her Will in 2012 and appointed her close friends, Carey Mopp and Tracy Heel, as the executors thereunder. Mopp and Heel are adults.

Jure's twin sister, Hope, and Hope's adult son, Bill, are the only beneficiaries under her Will.

Jure died in January 2013, leaving a \$21,000,000 estate. Both Mopp and Heel, the executors, wanted to take up their executorship functions without delay, but Mopp was then preoccupied with a consultancy assignment which would not end before July 2013. The executors were therefore concerned about the practical impact of this on the expeditious administration of Jure's estate.

Assuming that the executors had consulted you in February 2013 as to their options, briefly indicate the course of action which could have been taken at that time to obtain a grant of representation to Jure's estate.

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(iii)

Assume further that the relevant grant of representation to Jure's estate was made by the court in August 2013 to the person(s) whom you have identified under (i) ("the grantee(s)"). Having started to administer Jure's estate, the grantee(s) suddenly died in March 2014, leaving assets of the estate still unadministered.

Bill Jure, a beneficiary under the Will, now seeks your advice on the necessary steps to be taken to complete the administration of his aunt's estate.

Assuming that all other relevant persons are alive and willing to act, advise Bill as to the type of grant of representation to Faith Jure's estate which may ordinarily be applied for in these circumstances, and by whom. Briefly state your reasons.

iii) Based on your answer to (ii), identify the principal details to be included in the Oath (or other appropriate document corresponding to an Oath) to lead the second grant of representation to Jure's estate.

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### **QUESTION 7**

Bruce Joll is the sole executor under the Will of Reba Nuff, a physiotherapist, who died in 2012 leaving an estate comprising both realty and personalty valued at \$8,000,000. Joll recently obtained a grant of probate of Nuff's Will.



From Joll's investigations into Nuff's estate, he has ascertained that the following outstanding liabilities require attention:

- (j) \$4,500,000 owing to a former patient, arising from a court judgment awarded against Nuff for injuries sustained by the patient while undergoing physiotherapy treatment at her office;
  
- (ii) \$3,000,000 owing to Reliable Bank, arising from a mortgage loan issued on the security of Nuff's house;
  
- (iii) \$1,500,000 representing one year's income tax and other taxes;
  
- (iv) \$200,000 owing to suppliers of physiotherapy products;
  
- (v) \$120,000 owing to a medical practitioner, as a result of a loan to enable Nuff to acquire expensive physiotherapy equipment; and
  
- (vi) \$100,000 owing to a funeral home for mounting an engraved tombstone on Nuff's grave.

Advise Joll as to the options open to him for dealing with the debts of Nuff's estate, as well as the distribution of the assets.

## **QUESTION 8**

Molly Wake made her Will in 2012, under which she appointed Sid Card as her sole executor and distributed her entire estate to her two nephews, Bob Sloe and Gil Sloe.

Card died in January 2013, and Wake died in March 2014, leaving an estate worth \$12,000,000.

Bob and Gil, who are adults, now consult you for advice on the steps to be taken to administer Wake's estate.

- (i) Advise Bob and Gil as to the usual practice and procedure to facilitate the administration of Wake'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 at least two relevant exhibits.

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**END OF PAPER**