

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2016

PROBATE PRACTICE AND PROCEDURE

(AUGUST 12 , 2016)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Errol Free, a retired farmer, asked his neighbours, Gary Hyl and Ivan June, to be attesting witnesses to his Will. They agreed.

On February 18, 2015, the day of execution, Hyl and June were invited to Free's patio, where he was sitting beside a coffee table on which was a printed sheet of paper containing his testamentary wishes. With both neighbours present, Free then made his regular signature at the foot of the document. Thereafter, Hyl added his own regular signature beneath that of Free.

For his part, June made his customary signature at the top left-hand margin of the sheet, close to the words: "THIS IS THE LAST WILL AND TESTAMENT of me, ERROL FREE ...".

Free was present when both Hyl and June made their signatures. Also present, observing the entire proceedings, was Val Wilk, who boarded on the premises.

Free died in February 2016. Hyl predeceased Free, but June is still alive.

Free's executors attend your office with the original Will, requesting assistance in obtaining a grant of probate. You examine the Will and observe:

- (a) the position of June's signature at the top of the Will; and
 - (b) that there is no attestation clause in the Will.
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- (i) Briefly advise the executors of the content of any legislative provision(s) (primary or subsidiary), as well as any common law principle(s) relevant to your observations at (a) and (b) above.
 - (ii) Set out the main details of any affidavit which has to be filed on an application for probate of Free's Will in the Supreme/High Court, in order to address your observations at (a) and (b) above. **(IN POINT FORM)**

QUESTION 2

Tim Mood, a successful businessman, executed his Will in December 2011. At that date, Mood owned the following assets:

- (a) an upscale dwelling house (“La Pinta”);
- (b) a luxury yacht (“Oasis”);
- (c) a substantial art collection;
- (d) property comprising an office building at New Horizons in the capital;
- (e) shares in several private companies;
- (f) several bank accounts; and
- (g) a range of household and personal effects.

In his Will, Mood disposed of his estate as follows:

- (i) the dwelling house “La Pinta” to his wife, Ana, and her mother, Sall, as joint tenants;
- (ii) the luxury yacht “Oasis” to his daughter, Uma, absolutely;
- (iii) the art collection to his son, Neo, absolutely;
- (iv) the property with office building at New Horizons to his three adult children, Uma, Neo and Clay, equally and absolutely; and
- (v) the residue of his estate to his wife, Ana, absolutely.

In August 2014, the luxury yacht was destroyed when Hurricane Easy battered the jurisdiction.

Mood died in November 2015, and is survived by Ana, Sall and his children Uma and Clay. Neo predeceased his father in September 2013, and his (Neo’s) adult daughter, Mia, who survived Neo, died of a rare disease in July 2014. Mia was Neo’s only child, and she had no children.

The executors of Mood’s Will have obtained a grant of probate in his estate. They now seek your advice on the distribution of the gifts under the Will.

Assuming the debts 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 3

Roy Kode made a valid Will in 2010 in which he gifted his seaside villa to his business partner and mentor, Sam Fye, absolutely, and the residue of his estate to his two adult children, Tom and Yute, in equal shares absolutely.

Starting from 2011, there were increasingly severe disagreements between Kode and Fye concerning funds unaccounted for in the operation of the business, and in 2013, the partnership was dissolved. In 2014, Kode made another valid Will in which he gave his entire estate to his children, Tom and Yute, in equal shares absolutely.

The 2014 Will contained no express revocation clause.

Kode died in April 2016, without having made any other Will. Both the 2010 and 2014 Wills were found in Kode's heavy-duty safe, to which there was tightly restricted access. The 2010 Will was intact, but in the 2014 Will, the signatures of Kode and the attesting witnesses at the end of the Will were so marked through with ink that it is impossible to discern that they are signatures. The rest of the 2014 Will is undisturbed.

The executors of the 2014 Will now seek your opinion as to the validity of both the 2010 and 2014 Wills.

Advise the executors.

QUESTION 4

You are an associate in a firm of attorneys-at-law. Dane Fir, the named executor in the Will of Hala Gren, presents you with the original Will of Gren, who died on May 10, 2016. Fir is seeking to obtain a grant of probate of the Will, which is dated October 14, 2012.

The material parts of the Will appear below:

“.....

2. *I APPOINT DANE FIR of 7 Prominent Avenue, Elite Park, Musician, to be the Executor of my Will.*
3. *My executor is to pay all my debts, funeral and testamentary expenses.*
4. *I GIVE my entire estate, real and personal, to my daughters, Raya and Tania, absolutely, ~~in equal shares~~ as joint tenants. H.G.
L.I. E.R.”*

The remainder of the Will follows the usual drafting practice, and the Will clearly appears to be signed at the end by the testatrix and witnesses, Lea Inns and Errol Repp.

The text of paragraph 4 of the Will is clearly visible.

Fir explains to you the background to the amendment to paragraph 4 of the Will. On October 14, 2012, the day scheduled for execution of the Will, Gren, Fir, Inns and Repp were all present in Gren’s kitchen. Gren showed the others the unexecuted Will, which they recognised to be in the testatrix’s handwriting.

At this stage, no changes had been made to the Will.

The Will was then validly executed by Gren before Inns and Repp as subscribing witnesses, with Fir observing the execution.

After the execution, while Gren was serving refreshments to the others, a discussion developed regarding the implications of paragraph 4 of the Will. As a result, Gren decided to change the gift to her daughters so that they would inherit her estate as joint tenants, rather than in equal shares.

Accordingly, Gren made the amendment to paragraph 4, and the initials of the testatrix and witnesses were inserted near to the change as indicated above.

The Will was thereafter handed to Fir for safekeeping, and he kept it with his important papers at his home until after Gren's death.

Write a memorandum to your supervisor explaining whether there are any implications for the probate application arising from the amendment appearing in paragraph 4 of Gren's Will. You should include references to relevant legislation (primary and/or subsidiary) and case law, as appropriate.

QUESTION 5

Under Kay Win's Will of 2010, she appointed Mary Ban, Art Lee and Neil Jar, all adults, as her executors. Win's entire estate is gifted to her favourite charity, Orphans Unlimited.

Win died in June 2015, leaving an estate worth \$10 million.

Lee currently suffers from chronic neck spasms. While he is willing, in principle, to assist with the administration of Win's estate, he would prefer to take no part in the affairs of the estate until his physical condition improves.

Against this background, Ban and Jar seek your guidance as to what can now be done to raise a grant of representation to Win's estate.

- (i) Advise Ban and Jar as to the type of grant of representation to Win's estate which would ordinarily be applied for in these circumstances, and by whom.
 - (ii) Detail the principal contents of the Oath (or other document corresponding to an Oath) to lead the relevant grant of representation to the estate. **(IN POINT FORM)**
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QUESTION 6

Carl Sill died in February 2016, leaving an estate valued at \$11 million, comprised of realty, as well as shares and other personal assets. He did not leave a Will.

Carl had been married to Gina, who predeceased him in 2009. Carl is survived by his three adult children of the marriage, Faye, Dano and Jill.

Faye now wants to know what steps she needs to take to obtain legal authority to administer Carl's estate.

- (i) Briefly advise Faye of the steps to be taken to obtain a grant of representation in Carl's estate.
 - (ii) Set out the essential contents of the Oath (or other document corresponding to an Oath) to lead the grant of representation to the estate. **(IN POINT FORM)**
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QUESTION 7

Tara Vann, a musician of Caribbean descent, had been living permanently in Nigeria for two decades. Most of her assets were in Nigeria, but she also owned a beachfront villa, and shares in a private company, and maintained accounts at several financial institutions in your jurisdiction.

Vann died in May 2014, leaving a Will dated April 17, 2008 which appointed Joy Awo as her executrix. In March 2015, Awo, who resides in Nigeria, was granted probate of Vann's Will by the relevant court in that country.

Awo now wants to take steps to obtain legal authorisation to administer the real and personal estate Vann left in your jurisdiction.

Advise Awo as to the steps to be taken to obtain authorisation from the Supreme/High Court to administer the assets in your jurisdiction, listing the documents to be prepared and filed in the Court.

QUESTION 8

Jon Mane, who was domiciled in your jurisdiction at the time of his death, executed his Will in April 2012. Under the Will, he appointed Mike Deed as his sole executor. The Will disposes of his entire estate to his only child, Kara, absolutely.

Mane died on September 11, 2014, leaving a \$12 million estate comprising both realty and personalty.

At the time of Mane's death, Deed was permanently resident in Toronto, Canada. After taking legal advice, Deed opted to appoint Bill and Kate Boss, a married couple resident in the local jurisdiction, as his agents to raise the relevant grant of representation to Mane's estate.

On August 10, 2015, the Bosses duly obtained the grant of representation from the local court and started to administer Mane's estate. The Bosses died in a freak accident in April 2016, before having transferred all of the assets of Mane's estate to Kara, the sole beneficiary.

Against this background, Deed has taken the decision to personally complete the administration of Mane's estate. He now approaches you for advice on how this may be achieved.

Assume that all relevant persons are adults.

- (i) Indicate the type of grant of representation to Mane's estate that Deed should now apply for to complete the administration of the estate.

- (ii) State, the essential details of the Oath (or other document corresponding to an Oath) which Deed will be required to execute in Canada in order to lead the grant of representation which you have identified under (i). **(IN POINT FORM)**

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