

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2016

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 9, 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.
- (f) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Wilma Vent was born blind. In April 2015, Vent decided to make her Will and asked her cousin, Jason Tims, who is sighted, to help her in the preparation of the document, and to serve as her executor.

On April 17, 2015, the day of execution of the Will, Tims visited Vent at her home and meticulously recorded Vent's instructions as to the contents of her Will on a printed Will form. Tims then carefully read over the completed Will to Vent, who nodded in agreement.

This entire sequence of events was observed by Paul Burt and Sheila Mint, two members of Vent's church, who had been invited to be attesting witnesses to the Will.

With Burt and Mint present, Tims then guided Vent to the place on the form where she should sign, and Vent made an "X" in the appropriate spot. Immediately afterwards, Burt and Mint made their usual signatures in the designated spaces below Vent's "X", in Vent's presence.

The Will gifts her entire estate to the Institute for the Blind, and contains the usual attestation clause.

Vent died in February 2016, survived by both Burt and Mint. Tims attends your office with the original Will, seeking legal assistance in obtaining a grant of probate. On examination of the Will, you observe the "X" mark.

- (i) Briefly advise Tims of the content of any legislative provision that addresses the presence of the "X" mark.
- (ii) Set out the principal details of any affidavit which has to be filed on an application for probate of Vent's Will in the Supreme/High Court, in order to address the presence of the "X" mark on the Will. **(IN POINT FORM)**

QUESTION 2

Ben Ells, a racing car enthusiast, made a Will in August 2012 in which he gave all his racing cars to his friend Carl Gott, with the residue of the estate going to his two adult children, Roy and Stu, in equal shares. Helga Ibbo was appointed executrix under this Will.

Gott became ill in 2014, and had to walk with crutches. In early 2015, Ells made another Will in which he gifted all his racing cars to his dominoes partner, Aston Jet. Ibbo was again named as executrix. There were no other dispositions in this Will.

The 2015 Will contained no express revocation clause.

In late 2015, the relationship between Ells and Jet deteriorated sharply, to the extent that they were no longer on speaking terms. Ells died in January 2016, leaving realty, three racing cars, two regular cars and other personal property.

Both the 2012 and 2015 Wills were found intact. However, while the 2012 Will was discovered among Ells's significant documents, the 2015 Will was found with discarded items in a garbage container in the testator's garden.

Ibbo, the executrix under both the 2012 and 2015 Wills, consults you for advice as to the validity of both Wills.

Advise Ibbo.

QUESTION 3

On November 30, 2013, Will Parr, a successful artist, executed his Will in which he appointed Clark Munk as his sole executor. Under the Will, Parr distributed his estate to his children as follows:

“My seaside bungalow at Jupiter Bay to my son Jerry absolutely.
My fishing boat ‘Lost at Sea’, and all fishing accessories, to my son Keir absolutely.
ALL THE REST AND RESIDUE of my estate to my daughter Lisa Erle absolutely.”

Parr died in March 2015 leaving both real and personal property totalling \$20 million.

Munk, the executor, had anticipated that he would have received some choice pieces of art as a gift under Parr’s Will, and became embittered when he learnt that this was not the case. Since the funeral, he has resisted all attempts to discuss the administration of the estate with Parr’s children, and is now failing to return Erle’s telephone calls.

Munk, who is in possession of Parr’s original Will, has taken no action in relation to the estate, and has also refused to renounce his executorship.

Erle is now distressed, and consults you for guidance as to the course of action to be taken to have the estate administered.

- (i) Outline only the preliminary steps that may be taken on behalf of your client in the circumstances, describing the law and practice in relation thereto.
- (ii) Based on your answer to (i), set out the essential details of the principal document addressed to Munk, the executor, to be issued under the authority of the

Supreme/High Court at the instance of your client. **(DO NOT INCLUDE AN AFFIDAVIT.)**

QUESTION 4

Vic Reil and Brie Sol, both adults, were appointed executors of the Will of Cara Hoo, which was dated August 11, 2013.

Hoo died on February 27, 2014 leaving both real and personal property worth \$8 million. At that time, Reil was engaged in an international consultancy project, which required him to be frequently outside the local jurisdiction. As a result, it was agreed that Sol alone would pursue the application for probate in Hoo's estate.

Sol was granted probate on September 12, 2014, and started to administer Hoo's estate. Sol died suddenly on December 6, 2015, having previously paid creditors and transferred all of the realty and company shares forming part of Hoo's estate in accordance with the Will. However, proceeds of savings accounts with three financial institutions, as well as machinery and other personal property have not yet been administered.

Reil, who is about to finalise his international consultancy work, is now able and willing to complete administration of Hoo's estate. Reil therefore seeks your legal guidance.

- (i) Advise Reil as to the type of grant of representation for which he may apply to complete the administration of Hoo's estate **(DO NOT EXCEED 20 WORDS)**.
- (ii) Briefly advise Reil as to the practice and procedure relevant to the application referenced in (i).

- (iii) Detail the primary 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 5

You have been consulted by Gladys Eave to assist with securing a grant of probate of the Will of Gilbert Hax, who died on March 24, 2016. Eave hands you the original Will, which is dated August 8, 2014 and is entirely in Hax's handwriting, except for the witnesses' signatures.

The material parts of the Will are set out below:

"...

2. I APPOINT GLADYS EAVE of 2 Flyaway Hill, businesswoman, to be executrix of my Will.

...

5. I GIVE my gardener CHAD SLOW the sum of ^{\$15,000.00}~~\$8,000.00~~ for his long and faithful service.

6. ALL THE REST of my estate I GIVE to my cousins JOSH and JIM TAITE absolutely and equally."

Both the original text and the alteration in paragraph 5 of the Will are clearly legible.

The rest of the Will follows the customary drafting practice, and the Will clearly appears to be signed by the testator and witnesses, Fiona Lal and Don Sait.

Eave recounts to you the background to the execution of the Will:

“In early August 2014, Hax asked Eave to act as his executrix. She agreed, and was invited to Hax’s home on August 8, 2014, the day scheduled for execution of the Will.

On arrival at the home, Eave saw Lal and Sait, friends of Hax, in the living room with Hax. Eave took note of the unexecuted Will, which she recognised to be entirely in Hax’s handwriting. She also observed that in paragraph 5, the figure “\$8,000.00” had been struck through, with the figure “\$15,000.00” written above it.”

Thereafter, with Eave present, Hax signed the Will at the foot of the document before Lal and Sait as subscribing witnesses, the entire process following all the legal requirements.

The executed Will was then given to Eave for safekeeping, and she stored it in a sealed envelope in a bedroom drawer at her home until after Hax’s death.

Detail the essential contents of any special affidavit required to be filed on an application for probate of Hax’s Will in the Supreme/High Court, to address the amendment to the Will. (**IN POINT FORM**)

QUESTION 6

Steve Bagg was the owner and operator of Trim Line, a popular gym. He died in June 2015 without having made a Will.

Steve left an estate worth \$21 million comprising the following:

- (i) an absolute interest as sole proprietor of property housing the gym and other commercial units;
- (ii) an absolute interest as sole proprietor of a townhouse in the capital;
- (iii) 5,500 shares in Veggie Stew Limited, a private company;
- (iv) a 2014 Honda CRV motor car;
- (v) treadmills and other gym equipment used in connection with Trim Line's business;
- (vi) ceramic items, sculptures and other art work adorning the townhouse;
- (vii) several fixed-term deposits at Popular Bank;
- (viii) savings and current accounts at the local West Indies Bank; and
- (ix) a wide range of personal effects.

Steve is survived by his widow, Gail, and two of their children, namely, Hal and Jack, both of whom are adults. The third child of the marriage, Kay, died in 2013, leaving two adult children, Lala and Mike, who are still alive.

A decade before his death, Steve had entered into a romantic relationship with Dora Fayl, and in fact he had been cohabiting continuously with her since January 2007. Dora is still alive.

Also surviving Steve is his mother, Nell. His father, Chris, had predeceased him.

Gail now approaches you for advice on the administration of Steve's estate.

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

You are to assume that all the above-named assets are available for distribution to beneficiaries.

QUESTION 7

At the time of his death in 2014, Geoff Otto left an estate, consisting of both realty and personalty, valued at \$13,000,000 in total. Otto had been in business, providing information technology services as a sole trader under the name Tekkie Star.

Otto had executed a Will, and his executrix, Alicia Prof, recently extracted a grant of probate from the court. In carrying out her functions as executrix, Prof has discovered the following outstanding liabilities of Otto's estate:

- (i) \$4,750,000 in total, owing to several suppliers of technological products in Atlanta in the United States, for software and other materials supplied to Tekkie Star;
- (ii) \$2,000,000 representing one year's income tax and other taxes;
- (iii) \$250,000 owing to a funeral home for services carried out for Otto's funeral;
- (iv) \$450,000 owing to Price Low, a leading hardware store, for building material supplied on credit to Otto for the renovation of his home;
- (v) \$800,000 owing to a friend, representing a loan made to assist in covering the expenses of surgery for Otto's daughter in Leeds, England; and
- (vi) \$7,000,000 owing to Stout Building Society, arising from a mortgage loan issued on the security of Otto's home.

Advise Prof as to:

- (a) the options open to her for dealing with the debts of Otto's estate; and
 - (b) the distribution of the assets.
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QUESTION 8

Sara Cope died in July 2015, leaving an estate valued at \$9 million, comprised of realty, along with shares and other personal assets. She did not leave a Will.

Sara is survived by Vin, her husband of 25 years, and their two adult children, Jay and Karl.

Vin now wants to know what steps he needs to take to obtain legal authority to administer Sara's estate.

- (i) Briefly advise Vin of the steps to be taken to facilitate the process of administration of Sara's estate.

(DO NOT include any step or action subsequent to the issuing of the relevant grant of representation.)

- (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)**

END OF PAPER