

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2017

PROBATE PRACTICE AND PROCEDURE

(MONDAY, MAY 8, 2017)

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. Erasable pens are not allowed.
- (f) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Penelope Marsh, blind since birth, is unable to write due to severe arthritis in her hands. She dictates her Will to her eighteen-year-old nephew, Colin Marsh, who wrote it. At Penelope's request, Colin signed the three-page Will for Penelope at the top of the first page using his own name. The next day Penelope asked her friends, Safiya and Imani, to witness the Will. Safiya signed at the top of the second page and Imani at the end of the third page which contains gifts.

Oliver, one of the beneficiaries under the Will, saw it lying on a table and signed it at the bottom of the first page "to make it stronger". Before he had signed the Will he had accidentally torn the document where Colin had signed.

Advise Colin, who is the principal beneficiary under the Will, on the several legal issues raised by these facts.

QUESTION 2

Monique Dexter made a Will on December 12, 2007. She died on June 11, 2010 leaving an estate valued at \$10 million. The beneficiaries are her husband, Juan, and her two adult children, Deidre and Pablo. The executors, Marcus Lexington and Maria Darlington, come to your law offices for information as to what to do to complete the winding up of the estate.

- (i) Advise them as to the practice and procedure to wind up the estate.
 - (ii) Draft the Oath (or other appropriate document corresponding to an Oath) to lead the grant of representation.
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QUESTION 3

Mark Smith died intestate in April, 2004, leaving realty valued at \$10 million and personalty valued at \$2 million, including personal chattels valued at \$1 million.

He is survived by Mabel with whom he had shared a common-law relationship for eight straight years up to when he died.

Mark, though separated from his wife, Judith, for eight years, was not divorced until 2001. He is survived by his mother, Shelia Smith, and three adult children, Brittney, Lianne and Jack, from his marriage to Judith and a two-year-old child, Lily, a product of the relationship with Mabel. Judith is still alive.

Advise Mabel as to:

- (i) the distribution of the estate;
 - (ii) the type of grant of representation to be issued; and
 - (iii) the person(s) entitled to take the grant of representation.
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QUESTION 4

Jennifer Folkes died in July 2016, leaving an estate valued at \$20 million, comprising money in the bank and life insurance policies. She did not leave a Will.

Jennifer is survived by Jason, her husband of 15 years, and their three adult children, Mike, Roxanne and Patrice.

Jason now wishes to take the necessary steps to administer Jennifer's estate.

- (i) Advise him as to the practice and procedure to wind up the estate.
 - (ii) Draft the Oath (or other document corresponding to an Oath) to lead the grant of representation.
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QUESTION 5

By his Will dated February 26, 2000, Joseph Clarke appointed Tamara Wilson and Sasha Hendrix as the executrixes of his Will.

On November 30, 2013, Joseph died and left his entire estate, valued at \$30 million to his wife, Priscilla.

Sasha is currently abroad on a job-related assignment and will not be returning home for another three years. She has indicated to Tamara that she is in agreement with Tamara proceeding with the administration of Joseph's estate, so as not to cause any further delays.

Tamara now wishes to take the necessary steps to administer the estate and comes to you for legal advice.

- (i) List the documents to be filed in support of the application for the grant of representation.
- (ii) Draft the Oath (or other document corresponding to an Oath) to lead the grant of representation.

QUESTION 6

Magdeline Morano migrated to Australia in 1999 and died on July 21, 2001, leaving property in Australia and in your jurisdiction. In October 2013, her executors, Germaine Lewis and Ellis Morgan, who are domiciled in Australia, obtained a grant of probate of Magdeline's Will in Australia.

The executors now wish to take the necessary steps to administer the assets, valued at \$5 million, left by the testator in your jurisdiction.

- (i) Advise Germaine and Ellis as to the steps to be taken to administer the assets in your jurisdiction.
- (ii) List the documents to be prepared and filed in the Supreme/High Court.
- (iii) Draft the Oath (or other document corresponding to an Oath) to be filed in the Supreme/High Court.

QUESTION 7

You are a senior associate in the law firm, Great Minds & Associates. The managing partner asks for your opinion in relation to the following matter.

Tyrone Davy has retained the law firm, stating that he is the sole executor in the 2002 Will of Dawn Reid, who died in 2010. He wishes to have the Will admitted to probate without further delay. On perusing the Will, you note the following:

(a) In the fifth line, it reads:

"I appoint my devoted confidante Sharon Evans as executrix of this my last Will and testament."

The name "*Sharon Evans*" has been crossed out and the name "*Tyrone Davy*" substituted. There are no signatures or initials beside this change.

Tyrone's instructions are that Renee Harvey and Justine Francis are the attesting witnesses and they were present, and saw, when the change was made after execution but did not sign or initial the change.

(b) One line of the Will reads:

"To my sister, Agatha, the sum of \$80,000 and my Barry Watson painting".

The words "*to my daughter, Gene, the sum of \$200,000*" are inserted after the words "*the sum of \$80,000*" and are preceded by an asterisk.

There was nothing beside this change except the initials, "RH" and "JF", placed there by the attesting witnesses.

Tyrone also instructs that Dawn made this change in her own handwriting before executing the Will.

Prepare the requested opinion for your managing partner, advising on the effect of each change to the Will. Give reasons for your opinion.

QUESTION 8

Hector Bishop died on July 10, 1992, leaving a Will dated November 5, 1991. In his Will he left his beach cottage, valued at \$1 million, to his adult daughter, Hope Bishop, and the rest of his estate, valued at \$2 million, to his adult son, Ralph Bishop.

His wife and his parents predeceased him. He had made no provision in the Will for his other three adult children, Carlene, Angela and Morris, as he had given them properties in his lifetime. The sole executor under the Will, Gene Bishop, died in 2000, without having obtained a grant of representation in Hector's estate.

Hope has indicated her willingness to administer her deceased father's estate.

- (i) State the steps to be taken to obtain the relevant grant of representation.
- (ii) List the documents to be prepared and filed in support of the necessary application.
- (iii) Draft the Oath (or other document corresponding to an Oath) to lead the grant of representation.

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