

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

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, MAY 2022**

PROBATE PRACTICE AND PROCEDURE

TUESDAY, MAY 3, 2022

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, **not their names**, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.

- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year II MAY 2022 EXAMINATIONS, PROBATE PRACTICE AND PROCEDURE DROP BOX on TWEN** by **Wednesday, May 4, 2022 NOT LATER THAN** 1:00 p.m. (Jamaica), 12:00 p.m. (Belize) and 2:00 p.m. (Eastern Caribbean).
- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year II students with Examination ID numbers between **2100 – 2181** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year II – 2100 - 2181**

- Year II students with Examination ID numbers between **2182 - 2263** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year II - 2182 - 2263**”.
- Year II students with Examination ID numbers between **2264 - 2345** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year II – 2264- 2345**”.

ANSWER BOTH PARTS A AND B

PART A

Patrick Baptiste, a widower, died testate on August 31, 2021, in your jurisdiction. He is survived by his two adult children, John Baptiste and Theresa Baptiste, who are the named beneficiaries of Patrick’s entire estate. John has taken over the family business, whilst Theresa, a devout Catholic, migrated to Spain and became a nun. Patrick named his lifelong friend and financial adviser, Ramon Mattis, and his nephew Jake Peters, as the executors under his Will.

Jake has always had a desire to become a professional racecar driver, specialising in Formula One racing. In January 2022, Jake, after completing his final race on the amateur Formula One racecar circuit in France, was invited to race professionally at the European Formula One Grand Prix, with racecar company Vercedes. Jake’s passion was further fuelled by Lewis Hamilton’s record-breaking career in the European Grand Prix, and he decided to take up the challenge and leave the jurisdiction for Sweden.

Prior to his departure to Sweden, Jake, after careful consideration of the demands of his professional racing career, renounced his executorship under Patrick’s estate. He filed the Deed of Renunciation dated January 20, 2022 in the Supreme/High Court of your jurisdiction. He gave a certified copy of the Deed of Renunciation to Ramon, the other named executor.

Ramon died suddenly of a heart attack on March 31, 2022 en route to the Mount St. Christopher Hospital in the jurisdiction. Ramon had not been able to commence an application for a grant of representation in Patrick's estate.

John has been making enquiries and eagerly wishes for the process to be undertaken to obtain the relevant grant of representation in his father's estate. Theresa, John has confirmed, has no desire to return to the jurisdiction to deal with the matters under her father's estate and wishes for John to proceed, as she does not wish to be called away from the work of the ministry in Spain.

John has consulted with your law firm, Legal Solutions, to which you have been employed as an associate. During the consultations, John provided you with Patrick's original Will and indicated that he was present at the time the witnesses to the Will were attesting Patrick's signature and who thereafter subscribed their names as witnesses.

John informed you that he recalled the following sequence of events, which occurred on March 19, 2020 after the weekly family business meeting. Patrick asked him to remain along with staff members, Lorna Frye and Marcus Blessing, who were present at the meeting. Patrick withdrew a document from his briefcase, and said that he was putting his business in order. While still holding the document in his hand, Patrick said "*this document is my Will which I have drafted.*" Patrick then pointed to his signature at the end of the last page of the document, which he said he signed the evening before while alone at home.

Lorna, Marcus, and John were able to see Patrick's signature on the last page of this three-page Will. Prior to the execution, Patrick gave John the Will to read over. Patrick then asked Lorna and Marcus to be the witnesses of his Will.

As Lorna was about to sign as a witness in the presence of Patrick, Marcus received an important telephone call and had to step away from the boardroom table to a corner of the room to take the call. Marcus returned to the boardroom table after Lorna had completed her signature, and then subscribed his name as witness in Patrick and Lorna's presence.

Upon perusal of Patrick's Will you further observe the following:

- (1) That the Will has no attestation clause.
- (2) That page 2 of the Will is torn and bears a water mark.
- (3) That there is an amendment made to the Will at Clause 6, which originally read, *"To my son, John, all the proceeds of my BMMB Investor account"*, was altered by the insertion of the words, preceded by an asterisk, *"and to my daughter, Theresa, to be divided equally between them"*, after the word, *"John"*.
- (4) That the words contained at Clause 15, have been totally obliterated and cannot be seen with the naked eye.

At the time of Patrick's death, the assets of his estate comprised the following:

- (i) Realty valued at \$120,000,000.
- (ii) Personalty valued at \$50,000,000.
- (iii) Estate liabilities total \$35,000,000.

Jake's sister, Jahaila, lost her fiancé, Nathan Brae, in a freak boat accident on December 13, 2019. Jahaila and Martha Brae were the named executrices under Nathan's Will. Due to the emotional turmoil of losing her fiancé, Jahaila was unable to jointly obtain Grant of Probate under Nathan's Will, along with Martha, when she (Martha) had applied in April 2020. Instead, Martha obtained a Grant of Probate with power being reserved to Jahaila. Martha, however, died on December 16, 2020 without completing the administration of Nathan's estate. The unadministered assets under Nathan's estate include a penthouse apartment in Bridgemoor Estate in the jurisdiction to the value of \$45,000,000 and an investment account with Merry Day Investment Company Limited totalling \$3,000,000. All the liabilities under Nathan's estate have been settled by Martha.

Jahaila having learnt that Jake renounced his executorship under Patrick's estate during their FaceTime conversation, was expressing her own concerns regarding Nathan's estate and the need to complete the process to wind up the unadministered estate of Nathan and honour his memory.

Two of the beneficiaries under Martha's estate, Luke Brae and Peter Brae, her adult sons, have been anxiously pursuing the sole executrix named therein, Angela Mansfield, to commence application for a grant of representation, in order that Martha's estate may be distributed in accordance with her wishes under her Will.

Angela has indicated to Luke and Peter that she wishes to have nothing to do with court matters but she will not renounce her executorship. Angela has done nothing since Martha has died regarding the distribution and/or the administration of her estate.

Luke and Peter are the named residuary legatees and devisees under Martha's Will. The other named beneficiary under Martha's Will is her niece, Elizabeth Judah. Martha's estate comprises realty totalling \$15,000,000, personalty comprising \$2,000,000 and estate liabilities of \$400,000.

Luke and Peter are frustrated and wish to know what actions, if any can be taken to administer Martha's estate.

REQUIRED:

- (1) Advise John on the legal issues raised under Patrick's Will, based on the facts outlined and on the admissibility of the Will to probate. Cite authorities in your answer. **(1200 words)**
- (2) Advise as to:
 - (i) The type of grant of representation to be issued in Patrick's estate.
 - (ii) The person(s) entitled to take the grant of representation.
 - (iii) The usual practice and procedure to wind up Patrick's estate and distribute the assets of the estate. **(750 words)**
- (3) Draft the Oath (or Petition and Oath in the case of Belize) to lead the grant of representation in Patrick's estate.
- (4) Draft the Oath (or Petition in the case of Belize) to lead the grant of representation in Nathan's estate.

- (5) Advise Luke and Peter of the initial steps that ordinarily must be taken based on the difficulties they are experiencing in having Martha's estate administered, outlining the law and procedure. **(750 words)**
- (6) Draft the unsworn Affidavit In Support of the principal document which would have been addressed to Angela.

PART B

Aveena Baite, a Professor of Linguistics, was offered a position at the University of Sydney, Australia, in its Languages, Linguistics and Fine Arts Department. She accepted the position and migrated to Australia sometime in 1990. She has studied extensively in the Caribbean, Europe, and Africa.

Aveena became a prolific writer in the exposé of indigenous languages and the comparative analysis, among the spoken creoles of Australia and that of the creole spoken in the jurisdiction. Aveena's work was recognised worldwide, and she earned many prestigious awards and accolades during her lifetime.

Notwithstanding, Aveena's international prominence, she never forgot her roots in the jurisdiction. The phenotype of creole in the jurisdiction, and its expression of the mind, nature and character of the people, were the factors which ignited her interest in her chosen career path.

Aveena's annual trips to the jurisdiction involved not only her participation in literary symposiums, research, and writings, but she also invested heavily in the jurisdiction, owning several properties with historical significance and purchasing stocks and bonds of local companies.

On or around February 18, 2021, Aveena died in Sydney, Australia after the passing of her husband, friend and confidant, Eric Baite, in 2019. Aveena died leaving a Will, naming her two adult children, Kenya Baite Marks and Abraham Baite, as the named executors and beneficiaries.

The assets owned by Aveena in the jurisdiction comprise realty totalling \$75,000,000, and stocks and bonds totalling \$1,000,000. Aveena also had liabilities in the jurisdiction

totalling \$950,000.

Kenya and Abraham obtained a Grant of Probate in Aveena's estate in Australia and now wish to take the necessary steps to administer the assets that fall under Aveena's estate in your jurisdiction.

- (i) Advise Kenya and Abraham as to the documents that would be required and the procedure to be followed to administer Aveena's assets in your jurisdiction.

(750 words)

- (ii) Draft the Oath (or Petition and Oath in the case of Belize) to lead the grant of representation in Aveena's estate.

END OF PAPER