

# COUNCIL OF LEGAL EDUCATION



## EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

### **ATP 102: PROBATE AND ADMINISTRATION**

FRIDAY 20<sup>TH</sup> NOVEMBER, 2015

DURATION: 3 HOURS

#### Instructions to Candidates

- (a) Candidates **MUST** answer **FOUR** questions
- (b) **Question One is Compulsory**
- (c) **Answer at least one question from section B**
- (d) Question One carries 24 marks
- (e) All other questions carry 12 marks each
- (f) Marks shall be lost for illegibility

PLEASE TURN OVER

4. Mr. Kiptasia died intestate seven months ago, survived by two widows, Naumi and Charity. Naumi had two sons and Charity three daughters. At the time of his death, Kiptasia had amassed a considerable fortune.

The two widows and the eldest son applied for a Grant of Letters of Administration, in order to distribute the estate of the deceased, with no objection from the other members of the family. They agreed as to the distribution of the minor assets which included personal and household effects, cars and animals. However, the problem arose during the division of a 1,000 acre piece of land in Transmingi, Kitale. Naumi and her two sons proposed that they should inherit 700 acres while Charity and her three daughters inherit the rest. Naumi contended that Charity's daughters did not need a lot of land since they would get married and subsequently inherit from their husbands.

Charity found Naumi's proposal to be discriminative and instead proposed that the property be divided equally between the two families. Naumi refused to accept Charity's proposal.

Charity as a result has come to you for legal advice and to give you instructions to take the necessary legal action to ensure that she and her children receive appropriate share of her deceased spouse's estate.

Advise her accordingly.

(12 marks)

5. "Section 3 (5) of the Law of Succession Act has been rendered redundant by Section 6 of the Marriage Act, 2014." *Anonymous*

With the aid of the Law of Succession Act and the Marriage Act as well as case law, critically discuss the above statement.

(12 marks)

6. Mr. Nima, a businessman went to South Sudan to carry out sugar business. His business flourished until December 2014 when the South Sudan rebels started destroying businesses belonging to foreigners. Five months ago his shop was attacked. Before the attack the business people were advised that armed snipers were approaching their area. At this juncture Nima told his shop assistant that if he (Nima) was killed, his uncle Mainani should inherit his property. At about 7.00 p.m. the attackers arrived and Nima was shot dead at close range.

After Nima's burial his uncle Mainani went to court to petition for a Grant of Probate. However, Mr. Nima's father, Mzee challenged the petition claiming that his son had died intestate without a spouse or children, and that he (Mzee) was the rightful applicant. Mzee therefore plans to apply for a Grant of Letters of Administration in order to administer Nima's estate. Nima left several houses in Nairobi which Mzee had been taking care of and collecting rent during his son's absence. Secondly, Nima as his only son used to support him as Mzee's wife had died two months previously.

Mzee has come to you for legal advice. Advise him as to ~~and take~~ the necessary action he should take to protect his interests.

(12 marks)

## SECTION A

1. Mr. Tito was gunned down in May 2014 whilst enjoying a drink with friends outside Chelo Bar and Restaurant, Nairobi. The 80 year old businessman died testate, survived by two widows. The widows, Khanjora and Lidia had two children each, and lived in a palatial home in Njarui Estate together with the deceased.

Upon Mr. Tito's demise, his advocate, Mr. Njirini proceeded to read out the contents of his will in which several bequests had been made as follows:

- (i) That he was bequeathing his palatial home in which they lived to his first wife, Khanjora and her two children to the exclusion of his second wife, Lidia and her two children because Lidia had been unfaithful and cruel to him since his customary marriage to her fifteen years ago. The deceased appointed Khanjora as his executor.
- (ii) That he was bequeathing his Njori farm, Nakuru to his mother Mariarosa.
- (iii) That he was bequeathing his fish pond together with all the goats in his Kile farm in Kitale to his sister Jemima.
- (iv) That he was bequeathing to his brother Jeri all his shoes, suits and Pajero KCF 120CD vehicle.
- (v) That he was bequeathing a 100 acre piece of agricultural land to his friend Josho who had been begging Mr. Tito incessantly to leave him some bequest before Mr. Tito's demise, to remember Mr. Tito by.

Finally Mr. Tito stated that his body be cremated and his ashes thrown into the Indian Ocean as he did not wish to meet God when he died due to his sinful lifestyle.

After the cremation of the deceased, Lidia rushed to court to challenge the will, claiming that when the deceased drew his will, he was suffering from memory loss. She further claimed that the deceased used to chase her and her children from the home stating that he did not wish to see strangers in his house, and on such occasions she used to stay in her neighbours' homes.

From the above narrative, discuss in depth with the aid of the Law of Succession Act, Chapter 160, the Constitution of Kenya 2010 and case law, the following legal issues:

- (a) Advise on the validity or otherwise of Mr. Tito's will and its effect on his beneficiaries. (14 marks)
- (b) The bequests made to:
  - i. Khanjora and her two children. (2 marks)
  - ii. Mother of the deceased. (2 marks)
  - iii. Sister Jemima. (2 marks)
  - iv. Brother Jeri. (2 marks)
  - v. Friend Josho. (2 marks)

2. Mrs. Dogo, a wealthy businesswoman based in Naivasha died intestate two weeks ago, leaving behind flower plantations, dairy cows, cars, houses and Kshs.5 billion in Tajiri Bank. She was survived by two daughters both married to wealthy men, and three sons aged above eighteen years.

Upon Dogo's demise, her two daughters applied for a Grant of Letters of Administration claiming that they were the only children of the deceased, who was a widow. The letters were awarded to them and subsequently confirmed. The two daughters have been selling the property of the estate and sharing the proceeds to the exclusion of their three brothers.

Currently, the three brothers have come to you for legal advice on the following issues:

- (a) The steps they should have taken to ensure that they were included in the list of beneficiaries when their sisters applied for the Grant of Letters of Administration. **(2 marks)**
- (b) After receipt of the initial grant, and before confirmation of the same, the steps they should have taken to stop confirmation of the Grant. **(2 marks)**
- (c) Now that the Grant has been confirmed, what steps should they take to ensure that they are not left destitute by the two sisters? **(8 marks)**

3. (a) Mr. Jonnes, a loner who came to Kenya fifty years ago, lived alone on his 1,000 acres of agricultural land in Laikipia. He kept cows, goats and chicken.

Mr. Jonnes liked Kenya so much that he applied for and was awarded Kenyan Citizenship. However, he never married and kept to himself, rarely attending functions organized by other settler farmers near his farm.

Mr. Jonnes died three months ago, and since his demise, Mr. Toms, his neighbor has been taking care of Mr. Jonne's farm but cannot continue to do so because he (Mr. Toms) is leaving the country.

Mr. Toms has come to your chambers for legal advice on how to handle the deceased's estate so that it does not go to waste.

Advise Mr. Toms accordingly. **(6 marks)**

- (b) You are an Advocate of the High Court of Kenya dealing with succession matters in Nairobi. An old client Ganaki has come to your chambers to inform you that his wealthy father died intestate two months ago leaving several rental houses in Kamariro Estate in Westlands, and that the tenants have refused to pay rent. Consequently, he (Ganaki) requires legal advice on the procedure he can use to deal with the situation as the estate is losing a lot of revenue from uncollected rent.

With the aid of statutory provisions under the Law of Succession Act advise Ganaki on the following:

- (i) The documents that Ganaki must obtain before you as his Advocate, approach the court. **(1 mark)**
- (ii) The Grant(s) Ganaki should apply for to enable him to act on behalf of his father's estate until he finally distributes the same. **(5 marks)**

## SECTION B

7. (a) Present a critical analysis of the following:
- (i) The requirements of satisfactory system of trust accounts under the Law of Succession Act and the length of time such accounts should be kept upon distribution of the estate of a deceased. **(8 marks)**
- (ii) The rights of beneficiaries in respect of the estate accounts before distribution to the estate. **(4 marks)**
8. As the Personal Representative of the estate of Jona Kabira which has one tenant for life and four remaindermen, explain how you would apportion the funds described below:
- (a) A sum of Kshs.100,000 received by Kabira from one of his tenants on the eve of his death. **(4 marks)**
- (b) A sum of Kshs.2,000,000/- received months after Kabira's demise in respect of a block of flats' lease. **(4 marks)**
- (c) A sum of Kshs.5,000,000/- being proceeds of a life insurance policy paid out upon Kabira's death. **(4 marks)**
9. A Personal Representative is considered as more than a mere administrator of a deceased's property entrusted to him. He is allowed to invest the trust fund as part and parcel of the management and administration of the trust property.
- Discuss. **(12 marks)**
10. You are the administrator of the Estate of Juma Baki (deceased). Prior to confirmation of the grant of Letters of Administration, one of the beneficiaries of the estate approaches you to loan him a sum of Kshs.4,000,000/- from the estate to buy a car.
- (a) How would you deal with the request and why? **(3 marks)**
- (b) Show how you would reflect the sum in the Memorandum, Schedule of Assets and Cash Account. **(5 marks)**
- (c) Suppose the account with adequate funds to loan the beneficiary is held in a foreign bank within a commonwealth country, explain how you would access the same in order to loan to the beneficiary. **(2 marks)**
- (d) Would your response to the request be different if Juma Baki had died testate? **(2 marks)**
-

