

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

WEDNESDAY 16TH NOVEMBER, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) **Answer Question One and at least one question from Section Two**
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

SECTION A

1. Mr. Lozi, a seventy five year old businessman owns properties in Nairobi, Mombasa, Nakuru and a bank account in H.S.B.C Bank in London.

Two months ago he was diagnosed with a brain tumor. Since then, he has been on very strong medication as a result of which he suffers loss of memory. On going to see his doctor about a week ago, he was advised that his treatment needed to be changed as there was no improvement in his condition.

Upon reaching his residence Mr. Lozi decided to put his house in order by writing a will. Consequently he sent his Advocate an e-mail detailing his instructions as follows:

Firstly, he listed his assets and beneficiaries then stated that he wished to bequeath all his properties to his last born son, Johnny because Johnny had been taking care of him since the onset of his illness. Secondly, he informed the Advocate that he would go to his chambers the following day to sign the will.

However, Mr. Lozi died that night survived by his wife, Mary, two sons and two daughters. During the funeral arrangements three women appeared laying claims to Lozi's estate. The first one stated that she was married to the deceased under African Customary Law, but he divorced her because she was childless.

The second woman appeared with two children saying that she had been cohabiting with the deceased for ten years, during which time he used to maintain her and the children.

The third came with a three month old baby girl who was a spitting image of the deceased stating that the deceased was her boyfriend and apart from paying her rent, he used to pay her college fees. However, he had stopped seeing or supporting her upon the delivery of her child.

After the burial, the widow and the three women have sought legal advice from their respective advocates.

Advise each of the four women on their and their children's entitlement to the deceased's estate and the specific steps required in pursuing their respective claims.

(15 Marks)

2. (a) Miss Kalii was a soldier based at Langata Barracks. She was sent to Sierra Leone on a three-month peace keeping mission. Before her departure she called her cousin Mweni and informed her that she would wish to leave all her property to her fiancée Jude. She later left the country and completed her service period without any incident. A week after arrival back to Langata Barracks, Kalii got a bout of Malaria and died.

Kalii's mother and fiancée have come to you for legal assistance. Assist them accordingly.

(7 marks)

- (b) Mr. Chuli, a sixty year old farmer in Kitale wrote a will two months ago bequeathing his wife Molly and two sons his 100 acres of land equally.

Two weeks ago, he returned home from Nakuru unexpectedly. On arrival, he overheard his two sons talking loudly and laughing. The elder one was telling the younger brother:

“I wish the old he-goat dies on the way home so that I get my inheritance because I want to enjoy my wealth while I am young and not when I become toothless!”

Upon hearing his sons wish him dead, Mr. Chuli was very sad. He walked into the house crest fallen, went straight to the room where he had kept the will and tore it into pieces and went to sleep. He was found dead the following day.

After the burial, the widow and the two sons have come to your chambers with the torn will for advice. Advise them accordingly, noting to explain the specific steps required in dealing with Chuli’s estate.

(8 marks)

3. (a) Mr. Kuri a rich man with ten houses along State House Road died a month ago, survived by his son, Jeremy who has been living in the United States.

Upon the burial of the deceased, the tenants refused to pay rent. Jeremy is now confused on how to compel the tenants to pay rent and has come to you for legal assistance and to take the necessary action to ensure he receives the rent. Do the needful.

(7 marks)

- (b) Mr. Karingo died one year ago survived by four sons, John, Peter, Julius and Tom. John and Peter who were literate were appointed the personal administrators of the estate with the consent of the other brothers.

Two months ago John and Peter have proceeded to withdraw all the money from the deceased’s bank account without the consent of Julius and Tom.

- i. Julius and Tom have come to you for legal advice. Advise them
- ii. What action can you take on their behalf to ensure their rights are protected?

(8 marks)

4. Carol is your client. She has come to you for advise and states that she was married to one Johaness under African Customary Law and they lived together until Johaness died in a road accident, in which she was also involved. While in hospital her brother-in-law invaded her matrimonial home in Vipingu town and carried away everything.

Carol has now come to you for advice on the action necessary to get back her property. Advise her and set out the practical steps required in seeking a suitable remedy.

(15 marks)

SECTION B

5. A personal representative, being a trustee, stands in a fiduciary position vis-à-vis the beneficiaries of the estate. In that regard, both statutory and non-statutory law requires personal representatives to maintain records of the affairs of the estate.

Present a critical analysis of the types of records required to be kept by executors/administrators, explaining the reasons for maintenance of such records and the consequences of failure to keep the records.

(15 marks)

6. Set out a concise legal analysis of each of the following situations:

- (a) X dies intestate leaving behind a widow and four adult children. Two of the children are married sons while only one of the two daughters is married.

Who is entitled to be appointed administrator(s) of X's estate and how will the estate be dealt with?

(3 marks)

- (b) X dies intestate survived by two widows and several children. Some of the children are adults while some are minors. One of the widows and her son have filed a succession cause without involving the other widow and her children.

Advise the aggrieved widow on the practical steps to take in protecting her interests and those of her children. How will the estate be distributed by the court?

(3 marks)

- (c) Jane is one of the beneficiaries of the estate of X (deceased). Two of her brothers have filed a succession cause in court in which Jane has been named as a beneficiary. Jane has no objection to her brothers being appointed as administrators but she would want to ensure that she is notified of all steps being taken in the cause.

Advise her.

(3 marks)

- (d) X has died testate, leaving a will that is valid in all material respects but no executor(s) is/are appointed in the will.

Advise the beneficiaries on the specific steps to take in realizing the wishes of the testator. Supposing one of the beneficiaries is dissatisfied with his bequest, how can he challenge the will?

(3 marks)

- (e) Peter, one of the beneficiaries of the estate of X (deceased) is unhappy with the proposed mode of distribution of X's estate as presented to court.

In what manner is the distribution proposal presented to court? What practical step will Peter take to record his disagreement with the proposal?

(3 marks)

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

WEDNESDAY 20TH JULY, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) **Answer Question One** and **two other questions from Section One**
- (c) **Answer one question from Section Two**
- (d) All questions carry 15 marks each
- (e) Marks may be lost for illegibility

PLEASE TURN OVER

SECTION ONE

1. Mr. Yulle fell ill three months ago after eating prawns in a city restaurant and was admitted to Jamii Hospital, Nairobi South. However, his condition deteriorated rapidly and he died a week later. Before his demise Mr. Yulle had decided to make a will and had invited his lawyer to draw up one on his behalf. The lawyer went to the hospital with one of his partners at Akili and Co. Advocates and Mr. Yulle gave the lawyer the following instructions:

Firstly, that he was bequeathing all his property to his second wife, Truphosa who was childless. Mr. Yulle is survived by his two wives, Jerusha and Truphosa, both married under customary law and Jerusha's four children (two girls and two boys).

Secondly, that he wished to leave his Pajero Reg. No. KBB 1195C to his lawyer, for being a friend in need. He proceeded to give the lawyer the car keys to keep. Mr. Yulle died before signing the will.

During the funeral arrangements, two women appeared claiming that they were Mr. Yulle's wives. One of them, who had two sons, claimed that she had been cohabiting with Mr. Yulle at Maji Kali Estate, Nairobi North, for the past nine years, whilst the other claimed that she had been married to Yulle under the Marriage Act (Cap. 150, Laws of Kenya) but they had divorced four years later.

After the burial Mr. Yulle's lawyer read the will to the two wives but Jerusha dismissed the will and took the car keys from the deceased's lawyer by force.

Truphosa, Jerusha and her four children as well as the divorcee and the cohabitee and her two sons have sought legal advice from their respective lawyers as to who is entitled to the deceased's estate. Jerusha also requires specific legal advice pertaining to the vehicle the deceased had given to his lawyer.

On the same day, the parents of the deceased went to see their lawyer for legal advice claiming that their deceased son used to pay for all their needs, and if they did not receive a share from his estate, they would be rendered destitute and end up living in internally displaced persons camps.

- (a) Discuss in detail the advice the various lawyers should give their respective clients; and **(10 marks)**
- (b) What specific steps would each lawyer be required to take in pursuit of the interests of their respective clients? **(5 marks)**

2. Mr. Marvin died intestate five months ago and is survived by two widows, Lela and Doris, both married under customary law.

Upon the demise of Marvin, Lela applied to court for a Grant of Letters of Administration claiming that she was the only widow. Consequently, she was granted the letters on 21st January 2010 and the same confirmed on 11th August, 2010. On 3rd November 2010, Lela, as the administrator, by a deed of assent transferred all rights, title and interest of the estate of the deceased to herself as sole beneficiary, and proceeded to sell the said estate comprising a house on a five acre piece of land in Langata, Nairobi where Doris and her son live. When the purchaser came to occupy the property, Doris tried to chase him away in vain.

Doris has come to your chambers to seek legal advice. Advise her and outline the necessary action to ensure that she and her son are not rendered homeless.

(15 marks)

3. In light of Section 27 of the Constitution of Kenya 2010 (equality and freedom from discrimination) discuss the law relating to intestate succession in Kenya indicating the suitable approaches in addressing the various competing interests.

(15 marks)

4. You are an advocate of the High Court of Kenya practising with a leading law firm in Westlands, Nairobi. An old client, Johny, has come to your chambers and informed you that his wealthy father, died a month ago, and although he had made a will, Johnny cannot find it. Johnny further informs you that upon the demise of his father, tenants have refused to pay rent for his father's residential houses and shops in Karen and Chiromo Road. Consequently, Johny has instructed you to pursue the matter as the estate is losing a lot of money.

Johny has also given you instructions to take the necessary action to enable him to have access to funds in his father's account in London.

Set out the specific steps you will take in urgently carrying out your client's instructions.

(15 marks)

SECTION TWO

5. Discuss in detail the powers and duties of Administrators/Executors and the Public Trustee.

(15 marks)

6. Present a critical analysis of the following:

(a) Offences by personal representatives under the Law of Succession Act (Cap. 160, Laws of Kenya).

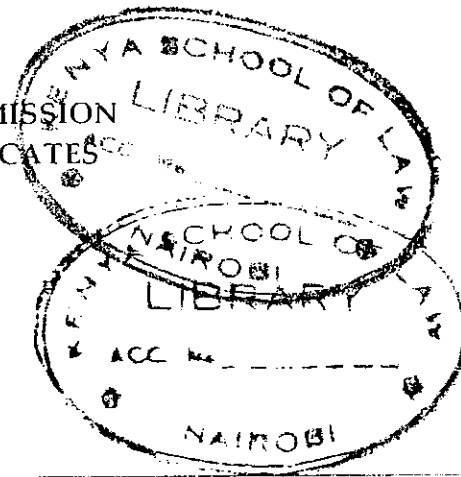
(8 marks)

(b) Rights of beneficiaries under intestacy provisions of the Law of Succession Act.

(7 marks)



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES



ATP 102: PROBATE AND ADMINISTRATION

WEDNESDAY 3RD NOVEMBER, 2010

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) **Answer Question One and at least one question from Section Two**
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

SECTION ONE

1. Mr. Remmy, a wealthy man, owned several farms in the Rift Valley and three houses in Milimani, Nakuru, as well as a large farm in Nyeri.

Remmy lived with his wife Myra and two sons, Josh and Jona in one of the palatial Milimani houses. Their happy family life was shattered on 1st January 2010 when Myra was killed by a speeding tanker on Naivasha Road as she drove to Nakuru from Nairobi.

After the demise of Myra, Remmy began to suffer from insomania and migraines and from time to time, his neighbours would see him walking around his compound calling out:

"Myra dear, what are you doing over there? Come back and make me our favourite steak"

His neighbours and the two sons became concerned and encouraged him to seek medical attention, but he declined to do so.

Remmy died three months later, leaving a will. During the funeral, two women appeared claiming that they were Remmy's wives. One of them who had two daughters, claimed that she had been cohabiting with Remmy at Bondeni for the past nine years. The other stated that she got married to Remmy under African Customary Law twenty years before his demise and although he had divorced her claiming that she was a witch, he continued to support her two sons who were, at the time of Remy's demise studying Engineering at the University of Nairobi.

After Remmy's funeral service and burial, the two sons of Myra went to see the family lawyer with the will. The lawyer noted that Remy had bequeathed his entire estate to the two sons but the said will was signed by Remmy and the two sons only. In the meantime, the two women and their four children have gone to see a lawyer for legal advice on their fate.

- (a) Discuss in detail the advice the two lawyers would give their respective clients. (10 marks)
- (b) What specific steps would be required of each lawyer in pursuit of the interests of their respective clients? (5 marks)

2. Section 3(5) of the Law of Succession Act, (Chapter 160 of the Laws of Kenya) has drawn ire from many wives in Kenya who have called for its immediate repeal.

Critics argue that the section sanctions adultery and bigamy while undermining the institution of marriage by encouraging breach of marriage contracts. They contend that a situation where a woman who had felt secure because she contracted a monogamous marriage and has a marriage certificate realizes upon the demise of her husband that she has to share this estate with persons who, in the first instance, disrupted her monogamous marriage, is extremely distressful. They therefore demand an urgent solution to this problem.

However, proponents of Section 3(5) argue that the section reflects the reality of the Kenyan way of life in which many Africans contract monogamous marriages but relapse to their traditional African practice.

In view of the foregoing sentiments, discuss, with the aid of decided cases, the impact of Section 3(5) of the Law of Succession Act and whether it has cured the mischief for which it was enacted.

What advice you would give to your clients who may come to your Chambers seeking advice on the Section?

(15 marks)

3. Lisa Orii's husband died two months ago. Upon his demise his relatives moved into their house in Migori and chased her away. Lisa is now living with one of her sisters in Kisumu town with her two young sons aged two and five years.

In the meantime, her deceased husband's relatives have sold all the household goods, as well as a newly acquired Nissan Matatu.

Lisa comes to see you for legal advice. Advise her accordingly and explain the steps necessary to protect her interests.

(15 marks)

4. Mr. Ruya died two months ago survived by one son, Roy. Although the deceased had written a will before his demise, Roy cannot find it.

Ruya owned several rental houses along State House Road, several cars and a chemist at Lavington Shopping Centre. Upon his demise all the tenants refused to pay rent. Secondly, Ruya's old friend, Jack, came to the compound to drive away one of the cars, claiming that Mr. Ruya had given him the keys at Nairobi Hospital where Ruya was admitted suffering from flu, pointing out that, should he die from his illness his good old friend, Jack, should take the car.

Roy is now confused and does not know what to do, and has come to see you for legal advice. In addition to the properties in Kenya, Ruya had a Bank Account in London which has since been frozen.

Advise Roy and explain the action needed to ensure that he inherits his late father's estate.

(15 marks)

SECTION TWO

5. Discuss in detail the powers and duties of Administrators/Executors and the Public Trustee under Section 79 of the Law of Succession Act, (Chapter 160 of the Laws of Kenya).

(15 marks)

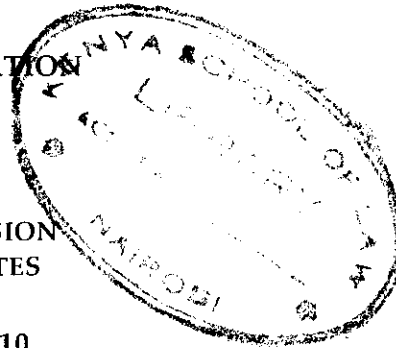
6. Reno died intestate four months ago, survived by four adult sons. Two of the sons applied for a Grant of Letters of Administration with the consent of the other brothers. A Temporary Grant of Letters of Administration has now been issued to the Applicants. Unfortunately, they are semi-literate and do not know how to manage their late father's estate worth Kshs.20,000,000/-.

The two Personal Representatives have now come to your Chambers for legal advice on what to do until they distribute the estate among the beneficiaries.

Advise them accordingly, indicating the kind of records required to be kept by an administrator/executor of an estate.

(15 marks)

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

AUGUST/SEPTEMBER 2010

PROBATE & ADMINISTRATION

Instructions

- (a) Candidates should attempt **FOUR** questions
 - (b) **Answer Question One and at least one question from Section Two**
 - (c) **Question ONE is compulsory**
 - (d) All questions carry 15 marks each
 - (e) Marks may be lost for illegibility
 - (f) Time allowed is **3 hours**
-

SECTION ONE

1. Mr. Hazi whose wife died two years ago, has been living in his Runda home alone. Three months ago he decided to harvest avocado fruits from the avocado tree in his garden. However he could not reach them without the aid of a ladder, which he went to collect from the garden shed. While trying to reach one of the avocados, he fell and hit his head on a stone next to the avocado tree and from that day Mr. Hazi has been suffering from severe headaches. He has also been dreaming that his deceased wife wishes that he joins her instead of suffering alone on earth. Consequently, Mr. Hazi decided to write a will.

On Monday 12th July 2010 Hazi went to his advocate's chambers to have a will drawn. He gave the advocate a list of his assets and details of his four sons and two daughters and instructed her to draw the will as follows:

Firstly, he stated that his Runda and Kileleshwa properties should be bequeathed to his sons, while the Karen property, comprising ten acres of land should be shared equally between his two daughters.

Secondly, he instructed you to make sure that his household goods should be bequeathed to Jedidah, his neighbor who has been cooking for him delicious meals and keeping him company since the demise of his wife.

Finally, he instructed you to give his two sons John and Allan, who should also witness the will, all his shoes and suits. He further pointed out that he would not sign the will because in accordance with his customary law, if he did so he would die within eight days. He left your chambers before you could explain to him the legal position relating to valid wills.

On his way home, Mr. Hazi met his old friend Mwema whom he gave a lift as Mwema lived in his neighbourhood. Upon their arrival he gave Mr. Mwema his car keys and told him that if he died from his current illness he should take the car. Mr. Hazi died two months later.

The deceased's six children plus Jedidah and Mwema have come to you for legal advice because they wish to inherit and enjoy their respective property from the deceased's estate.

Advise them accordingly.

(15 marks)

2. Tajiri, a wealthy businessman died intestate two months ago leaving several properties under lease in Githurai. He is survived by one son, Joshua, who has been unable to collect rent because tenants have refused to pay claiming that they did not enter into the lease agreements with Joshua but with the deceased. The estate is losing a lot of money from uncollected rent. Joshua has now come to your chambers for legal advice on the way forward.

(a) What advice will you give him?

(5 marks)

(b) What factual information will you require from him to enable you act appropriately?

(5 marks)

(c) What legal steps will you take in order to protect your client's interests?

(5 marks)

3. Mzee Buko is a well known polygamist with two wives who are both childless. He married Raeli under the Marriage Act (Chapter 150 of the Laws of Kenya) and Susana under African Customary Law. However, unknown to the two wives, Mzee Buko has for the last twelve years been living with Kadogo in his Runda palatial home, together with their two sons.

Mzee Buko died intestate two months ago and his two wives have petitioned the court for a Grant of Letters of Administration to enable them share the estate of the deceased equally.

In the meantime, Kadogo and her two sons have come to your chambers for legal advice. Kadogo comes with birth certificates of her two sons, now aged 10 and 11 years respectively.

Advise Kadogo on her legal status and that of her sons and explain the necessary action to be taken so that they are not rendered destitute.

(15 marks)

4. Mr. Juma died intestate ten months ago and is survived by two widows, Roda and Tari, together with eight grown up children. Roda's has four daughters while Tari's four sons. At the time of his demise Juma has amassed a considerable fortune.

After the burial of the deceased, the two widows and the eldest son applied for a Grant of Letters of Administration, with consent from the other members of the family.

Upon receipt of the Grant of Letters of Administration, the family members agreed as to the distribution of the deceased's minor assets which included personal and household effects as well as motor vehicles. However, problems arose during the division of a 200 acre farm and the

farm houses erected on the land. Tari and her four sons proposed that they should get 120 acres while Roda and her four daughters should inherit 80 acres because the daughters would get married and subsequently inherit the property of their husbands. Roda found the proposal to be discriminatory and insists that the property should be divided equally between her family and Tari's but Tari is adamant.

Roda has now come to your chambers and instructs you to pursue the matter to ensure that her daughters and herself get their rightful share of the deceased's estate.

Proceed with the case urgently.

(15 marks)

SECTION TWO

5. Personal representatives have the duty, *inter alia*, to produce to court when so required, a full and accurate account of all dealings with the deceased's estate – Section 83 of the Law of Succession Act (Chapter 160 of the Laws of Kenya).

Discuss in depth the nature and purpose of the types of records contemplated by this section.

(15 marks)

6. Mr. Jacobo's Personal Representative has come to your chambers for legal advice on the following concerns after receiving a temporary Grant of Letters of Administration.

(a) One of the remaindermen, Jeni has asked for Kshs.10,000- for School fees.

(7½ marks)

(b) The estate has some surplus funds which the personal representative proposes to invest in buying Safaricom shares before he receives the confirmed Grant of Letters of Administration.

(7½ marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

JUNE 2009

LAW OF SUCCESSION

Instructions

- (a) Answer **QUESTION ONE** and **ANY OTHER TWO QUESTIONS**
 - (b) **QUESTION ONE** is **COMPULSORY** and carries **20 marks**
 - (c) All other questions carry **15 marks** each
 - (d) Marks may be lost for illegibility
 - (e) **Two (2) Hours** are allowed
-

1. Mr. and Mrs Bomagi's youngest son, who was five months old, died in his sleep, although he was not sick. After the funeral, Mr. Bomagi developed depression and on several occasions he could be seen sitting under a tree near their home muttering incoherently for several hours.

Two months ago, Mr. Bomagi's wife, Linda and their two sons escorted him to hospital for treatment. He remained in hospital for one month. When Mr. Bomagi was discharged from hospital, he began to suffer from insomnia. Two weeks ago, his wife saw him, running round the house naked; and she called the family doctor to examine him.

A week ago, Mr. Bomagi went to his Advocate's chambers to give him instructions on drawing up his will because he did not wish to die intestate.

Firstly, he gave the Advocate a list of all his assets and the persons to whom he wished to bequeath his property.

Among the main beneficiaries was a woman based in the United States of America who used to be Mr. Bomagi's girlfriend who had written to him informing him that she was unmarried and that she was about to return to Kenya to marry him. However, all her friends knew she had married a man who had been awarded a Green Card in order to enable her accompany him to the United States of America.

Furthermore, there was a bequest to Mr. Langi his best friend, who had begged him to leave him something to remember Mr. Bomagi by.

There was also a bequest to Mr. Bomagi's nephew, Jilo, who had threatened him that if he does not bequeath some property to him, he was going to engage a witch from Arusha, Tanzania to bewitch him and ensure that Bomagi died a slow and painful death from an incurable disease. Finally, there was a bequest to "my Advocate and best friend" comprising two houses situated at Kahawa Chumvi.

After scrutinizing the typed will, he requested the Advocate to be his executor. He also requested him to ensure that his two sons witness the will.

Upon execution and attestation, Mr. Bomagi took the will and kept it in his safe. Mr. Bomagi died in his sleep a week later, survived by his wife Linda and two grown up sons.

During the funeral, many mourners came to the homestead to condole the family. Among the mourners was a young woman who had two young boys. When they entered the living room, the two boys pointed at a photograph on the wall and asked their mother; "mum, what is our daddy's picture dong in this house?" Everyone turned to look at the young boys, and to their shock and consternation, they were a spitting image of Mr. Bomagi! Mrs Bomagi was infuriated and chased the young woman and her sons away.

After the funeral Mrs Bomagi and her two grown up sons went to see their advocate for legal advice, and as the executor of the deceased's estate, to request him to take the necessary action to enable them have access to the assets of the deceased. Whilst they were in the Advocate's chambers, the Advocate's secretary entered with an urgent note stating that there were two women at the reception, one with two sons and the other with a young daughter.

The woman with two sons claimed that she was married to the deceased under Kamba Customary Law, while the one with a young daughter claimed that she had been cohabiting with the deceased at Maricho estate, Nairobi South.

The two women further claimed that their children were issues of their union with the deceased and that they were both house-wives. Consequently, they said, they needed money for their upkeep and school fees urgently. At this juncture Mrs Bomagi produced her marriage certificate and gave it to the Advocate.

With reference to the Law of Succession Act (Chapter 160, Laws of Kenya and Case Law, advise the parties on the following:-

- (a) Requirements and formalities of valid wills and the fate of Mr. Bomagi's will. (7½ marks)
- (b) Effect of failure to make provision for dependants. (5 marks)
- (c) The different types of applications for grant of representation that the parties can make. (7½ marks)

2. Mr. Toro passed away in January, 1999 without leaving a will. He was survived by three wives, Frida, May and Chungwa, and nine children, 5 daughters and four sons. Frida had three sons; May had one son and two daughters while Chungwa's three children were all girls.

Upon the demise of Mr. Toro, the three windows and one son applied to the High Court for a Grant of letters of Administration to Toro's vast estate with consents from the other members of the family.

The family members agreed on the distribution of the deceased's minor assets; which included household effects, motor vehicles and Posho Mills. The problem was with the division of a 900 acre farm and the farm house.

Frida, the first wife and her three sons proposed that they should get 400 acres, whilst May's son should get 100 acres and the rest to be divided equally between the five daughters and their mothers. Frida argued that as the senior wife, she had made improvements to the property before May and Chungwa married into the family. Secondly, May had one son and two daughters while Chungwa's children were all daughters and daughters had the option of getting married and leaving home, hence sons should get a bigger portion.

May and Chungwa found the proposal discriminative and they proposed that the property be divided equally between the three families. The court made an order that Frida and her three sons should get more because Frida had assisted her late husband in the acquisition of the property and that she had more sons than the other two wives.

May and Chungwa have come to you on behalf of themselves and their six children for legal advice on whether or not to appeal against the High Court decision and the likelihood of success of their appeal.

Advise them.

(15 marks)

3. Mr. Gaca was an eccentric loner. At 72 years of age, he had not married. He had considerable wealth and lived comfortably. However, age and loneliness had started to take their toll on him. Over the last eight months, he had been in and out of hospital and appeared manifestly weak.

In March 2009, he was discharged from hospital and as soon as he came out of hospital, his brother Gugi, brought him to his residence, because Gaca was unable to take care of himself.

On 3rd April 2009, Gaca became grievously ill, at which time his brother summoned a priest to baptize him. It was a simple arrangement full of religious piety although Gaca had never been a religious person, and it was obvious that matters were being imposed on him. In a short sermon, the priest extolled Gaca's virtues of hard work, and added that he should ensure that his large estate is used to assist the less fortunate in society. Gugi was less endowed and had a large family which had throughout their lives been struggling for survival.

When the priest left, Mrs Gugi made a lavish and sumptuous meal for Gaca. Whilst Gaca was eating, Mr. & Mrs Gugi prevailed upon him to leave his property to them as he had no family. They further informed Gaca that as Gugi was his only brother he was the right person to inherit his property. Gugi proceeded to draw a will which Gaca signed and he also signed as a witness in the presence of his wife. Gaca died that night survived by his brother Gugi and two sisters who were casual labourers.

During the period of Gaca's illness, Gugi and his wife displayed considerable hostility towards their sisters and their children and strictly prohibited them from visiting the deceased.

After the burial of Gaca, his brother applied for a Grant of Probate as he had appointed himself the executor of the deceased's estate.

In the meantime, Gugi's two sisters have come to your chambers seeking legal advice on the matter.

Advise the two sisters accordingly.

(15 marks)

4. With the assistance of statutory provisions and relevant decided cases, discuss the law relating to privileged wills.

(15 marks)

5. "Section 37 of the Marriage Act, Chapter 150, Laws of Kenya, should be repealed immediately as it has been rendered redundant by Section 3(5) of the Law of Succession Act, Chapter 160, Laws of Kenya." Anonymous.

With the aid of decided cases, provide a detailed discussion of the above statement.

(15 marks)

6. Mr. Bobi died a month ago leaving his wife Doli and two children aged 18 years and 20 years respectively. One of them is in Chulu High School, while the other is at Parklands Campus, University of Nairobi. Both need school and college fees, respectively.

At the time of demise, Mr. Bobi had a large wheat farm and many cows, sheep and chicken in Transmara. He also had two healthy accounts with Barclays Bank, Westlands and HSBC Bank, Park Road, London.

During the period of his indisposition, Mr. Bobi called his sister, Nina and told her that should he die from his illness, all his milk cows would be hers. He also called his best friend, Rasa and told him that he was leaving him his Pajero Prado vehicle, and gave him the car keys. Now the widow, Nina and Rasa have come to your chambers, each seeking legal advice on the following:

(a) Doli would like to know how she would be able to have access to her deceased husband's accounts in order to withdraw school and college fees for her children; and also to harvest wheat and milk their cows without offending the law.

(5 marks)

(b) Nina is seeking legal advice on how she can have access to the milk cows her late brother gave her because her sister-in-law has refused to let her have them.

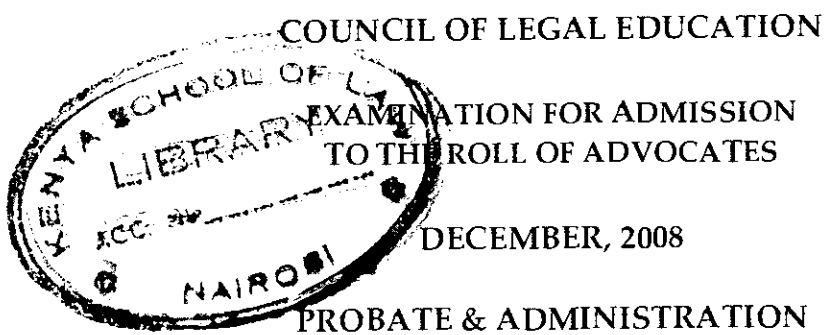
(5 marks)

(c) Rasa would like to drive the Pajero the deceased gave him, but Doli has chased him away from the compound claiming that he stole the keys of the vehicle with the intention of stealing the vehicle.

Advise the parties accordingly

(5 marks)

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Instructions

- (a) Answer Question ONE and any other THREE QUESTIONS
 - (b) All questions carry 15 marks each
 - (c) Marks may be lost for illegibility
 - (d) Time allowed is 3 hours
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1. On 23rd October, 2008, Mrs. Jinzi, a 54 year old Secretary with the Ministry of Finance, came to see you. Upon her arrival, and before she sat down, to your shock and consternation, she began to mutter incoherently for about five minutes, after which she sat down to give you instructions on drawing up her will as she did not wish to die intestate.

Firstly, she pointed out that for the past two years she has been suffering from insomnia and migraines and from time to time, she sleep walks; consequently, she stated that since her migraines are getting worse despite taking prescribed drugs, she believes she is about to die.

Secondly, she produced a list of all her assets and a list of persons she wished to bequeath her property to. Among her beneficiaries was a young man called Johnny, with whom she has been having intimate relations for several years. She went on to point out that she currently maintains him as he is jobless and therefore she does not want him to suffer upon her demise.

Furthermore, there was a bequest to her niece, Jini, who had threatened her with instant death if she does not bequeath her some property; as well as her boss, who, for several years allowed her to leave work early, particularly, during rainy season; and who begged her to bequeath him some of her property.

Finally, Mrs. Jinzi, informed you that she did not include her retired husband in the list of beneficiaries because she has, on several occasions, caught him in bars with girl friends, and therefore proceeds from the sale of his bequest may be used for entertaining his girl friends. However, she noted that she will continue to maintain him until her demise.

In conclusion, she instructed you to give his two sons, Mica and Joki, who should also witness the will, more assets than her two daughters, Jica and Nanci, because she contented that the girls shall get more from their husbands when they get married.

As a renowned Advocate of the High Court of Kenya on succession matters, advise Mrs. Jinzi, the essential and formal requirements of making valid wills, as well as, the bequests that may fail, so that her wish to die testate shall not be an effort in futility.

(15 marks)

2. In early 2007, Jimi, a bachelor, and a retired Major from the Kenya Army, made a valid written will giving all his property to his girlfriend, Mpenzi. However, in January 2008, he made another valid will, in which he bequeathed all his property to his new girlfriend Penzi. There is no mention of Mpenzi in his new will. Jimi died in July 2008, leaving his father Joni and three grown up siblings.

Mpenzi and Penzi have now come to your chambers with their respective wills for legal advice on who should apply for a grant of probate.

Furthermore Jimi's father has come to your chambers to give you instructions to apply for a Grant of Letters of Administration to enable him deal with his son's estate because he died a bachelor.

With the assistance of statutory provisions under the Law of Succession Act, (Chapter 160, Laws of Kenya,) as well as case law, advise Mpenzi, Penzi and Joni accordingly.

(15 marks)

3. Evelyn Chela's husband of 24 years, Martin Bama, died intestate, recently, leaving behind Chela and three issues, Kipromo, the first born, aged 23 years and recently employed, Kipnego, the second born, aged 21 years and pursuing an LLB degree through the Parallel Programme at the University of Nairobi. The youngest, Chero, aged 16 years is in Kipsigis Girls High School. The last two children need college and school fees when the two institutions open in three week's time.

Further, Bama left behind a reasonably large estate comprising 20 grade cows, three Matatus that ply the Sotik-Nakuru Route, a 50 acre tea farm at Sotik, a healthy credit balance of Kshs. 5,000,000/= at the Cooperative Bank of Kenya, Kericho Branch, as well as an outstanding bank loan of Kshs. 2,000,000/= at the Barclays Bank of Kenya, Sotik Branch. He has a host of paid workers on the farm.

Upon inquiring around for a competent and astute lawyer to take up the brief, Chela is advised that you are such lawyer. She settles for you. Briefly outline the steps that Chebii needs to take in order that she administers her late husband's estate, taking into account both short-term and long-term actions that she needs to take, up to the final winding up of the estate.

(15 marks)

4. Josephat Kinya, born in Kiambu, Kenya, left for the City of Melbourne, Australia in 1992 where he has since lived with his family. Hardworking and innovative, Kinya ran a successful taxi business in Melbourne; out of which business he acquired real property both in Australia and Kenya.

Through legal influence, Kinya wrote a valid will in which he appointed an executrix of the estate and identified his legatees. He carefully spelt out how his property is to be distributed among them. He never renounced his Kenyan citizenship.

Two months ago, Kinya died of a sudden illness while on a business trip to Kumasi Ghana with his family.

From the above facts:

- (a) Determine the jurisdiction for the application of grant of probate.
- (b) If granted in a jurisdiction other than Kenya, explain the procedures required for legal recognition of the said grant in Kenya.

(15 marks)

5. You are an Advocate practicing with a leading law firm in Naivasha. You receive a client who informs you that he recently lost his wealthy father in a road accident. His father did not write a will. Your client explains that after his father's death, he has been unable to act on the estate. As such he has not been able to collect rent from tenants who have adamantly refused to pay rent declaring that they do not know the correct person to pay the rent to. The estate is losing a lot of money from the uncollected rent. Your client needs your urgent advice on the way forward.

(a) What advice will give your client?

(5 marks)

(b) What factual information will you require from him to enable you act?

(5 marks)

(c) What legal steps will you take in order to protect your client's interests?

(5 marks)

6. Mzee Masumbuko is a known polygamist having two wives. He married the first wife, Sarah, in Church and the second one, Saruya, under African Customary Law. Sarah has two children while Saruya has three. Masumbuko also has a child, Tabu, who was born out of wedlock, and is unknown to his two wives, but he used to maintain him during his life time.

Masumbuko died intestate seven months ago. Upon his demise, Sarah petitioned the court for a grant of letters of administration intestate. In the affidavit in support of her petition, Sarah claimed that she was the only wife of Masumbuko. Saruya, who lives in her rural home, learned later about the petition when an old friend brought her a copy of the Kenya Gazette in which the matter had appeared several months earlier. Saruya moved to court only to find that a Grant of Letters of Administration intestate had been issued to Sarah.

(a) What action should Saruya take?

(5 marks)

(b) What application can Tabu make to ensure that he is provided for?

(5 marks)

(c) What principles should determine the distribution of Masumbuko's estate

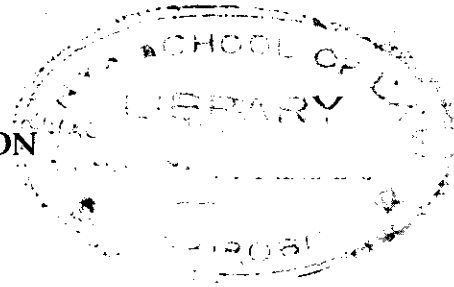
(5 marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

NOVEMBER, 2008

THE LAW OF SUCCESSION



Instructions

- (a) Answer QUESTION 1 and ANY OTHER TWO (2) QUESTIONS
 - (b) QUESTION 1 is COMPULSORY and carries 20 marks
 - (c) All other questions carry 15 marks each
 - (d) Marks may be lost for illegibility
 - (e) Two (2) Hours are allowed
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- 1 (a) Mariamu, a wealthy business woman, died of cancer three months ago after suffering for a period of five years leaving her husband Brian, who had recently been retrenched from his Civil Service Job and two sons, Joshua and Mica. Before her demise Mariamu made a will bequeathing all her property to her two sons. She reasoned that if she bequeathed some of her property to her husband, he might squander the proceeds with girlfriends as she had caught him with one at Karumaindo bar and Restaurant six months earlier.

Upon Mariamu's demise, her two sons petitioned the court to grant them Probate in order to deal with their mother's estate, but their father challenged the will claiming that his deceased wife used to maintain him during her life time, particularly when he was retrenched until her death.

Brian has now come to your chambers for legal advice and to represent him in court.

Advise Brian accordingly.

10 marks

- (b) Mr. Ziro, a wealthy businessman, died intestate three years ago, survived by two widows, Mebo and Janzi who had four children each. However, unknown to the two widows, Mr. Ziro had a mistress with whom he had sired two children, Amina and Abdala. At the time of his death Mr Ziro had amassed a considerable fortune including a Savings Bank Account held by HSBC Bank, London.

Upon the demise of Mr. Ziro two widows together with their two eldest children applied to court for a Grant of Letters of Administration at which time Amina and Abdala moved to court seeking to be included in the list of beneficiaries in Ziro's estate; the widows and their eldest

children consented and as a consequence the Court granted them a Grant of Letters of Administration. The Grant of Letters of Administration have yet to be confirmed although the two widows have already divided the property of the deceased between themselves except the London Bank Account's funds.

A week Ago Amina and Abdala went to request for their share but they were chased away by the two widows.

Amina and Abdala have now come to you for legal advice on how to get their share of Mr, Ziro's estate. Advise them accordingly.

10 marks

2. Chira, a 90 year old farmer in Transmara, has been suffering from ill health for the last two years and now wishes to make a will bequeathing his property to his wife Catherina and his two daughters, Jessica and Mira.

A week ago Chira came to your chambers to draw for him a will which adhered to requirements and formalities of making a valid will. He subsequently took the will and locked it in his safe after which he went for a drink with his old friends. Whilst enjoying their local brew he told his friends about his will. His friends were shocked to hear that Chira had made a will and told him that he should destroy it immediately as he was inviting a bad omen upon himself, and if he fails to do so, he would die soon. On the way home Chira was disturbed by what his friends told him and decided to destroy the will. When he reached home he went straight to the safe, removed the will and tore it into two pieces and threw it back into the safe because he thought he should consult his lawyer before destroying the will completely.

On the way to his lawyers chambers Chira was knocked down by a speeding motor vehicle killing him instantly.

After Chira's funeral, his wife and daughters found the will torn into two and although they could read the contents they felt that they should consult a lawyer on the validity of the will before taking any further action.

Catherina and her two daughters have now come to your chambers for legal advice. Advise them accordingly.

15 marks

3. Jatelo married his wife Julia under the Marriage Act, Chapter 150 of the Laws of Kenya in 1970. However, true to his African manhood he married Maria and Jeni under African Customary Law in 1975 and 1980 respectively. Jatelo lived with Julia in Kileleshwa whilst Maria lived in Kitale and Jeni in Kericho.

During Jatelo's live time none of the wives knew each other.

Jatelo died childless two months ago. Upon his demise the three women met at his funeral at Got Jatila and a fight ensued but were separated by mourners. Each of the three women wishes to petition the court for a Grant of Letters of Administration each claiming to be the only widow of the deceased. Do advise them on the provisions of the Law of Succession Chapter 160 of the Laws of Kenya pertaining to their current predicament.

15 marks

4. Jona, a mariner based at Kaza died in action while engaged in peace-keeping operations in Somalia. Prior to his death, he wrote an undated letter to his girlfriend, Jacinta, informing her that all the property he owned shall be hers should he die in action. A month ago Jona was shot and killed by a gunman while patrolling Jisu Road in Mogadishu.

Upon Jona's demise, his father applied for a Grant of Letters of Administration claiming that his son died intestate. Jacinta, on the other hand applied for a Grant of Probate arguing that the letter addressed to her was a will.

Advise the parties.

15 marks

5. Discuss in depth Grant of Probate and Grant of Letters of Administration and the mode of application for each grant, as well as, the different types of temporary grants particularly where perishable goods need to be dealt with, and access to bank accounts for immediate use are concerned.

15 marks

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