

COUNCIL OF LEGAL EDUCATION.



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 102: PROBATE AND ADMINISTRATION.

FRIDAY 21ST JULY, 2017.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Six printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** questions.
- (c) **Question ONE** is compulsory and carries **20 marks**.
- (d) **All other questions** carry **10 marks each**.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

Mr. and Mrs. Punda Milia were married in the year 1980 at the Maneno Matamu Church. They were blessed with three (3) children. In the year 2000 they relocated from their rental home in the Republic of Kenya to Lala Land Country.

In the year 2005 Mr. Pundamilia having had enough of Lala Land County informed his family that he was ready to return to Kenya. Mrs. Pundamilia and her children refused to consider the proposal and Mr. Pundamilia returned to Kenya without his family. He established a sole proprietorship business which he operated single handedly.

In the year 2006 he purchased a parcel of land in Sokwe Mtu County. Not long thereafter, he met a lady Fisi with whom he began a relationship in the year 2009. At the time, Fisi was a single mother of one child Fisilet.

Six years ago Mr. Pundamilia visited the parents of Fisi and paid half dowry and not the full dowry as demanded by Fisi's parents. Traditional rites were performed and Mr. Pundamilia and Fisi were pronounced husband and wife by the elders. They were blessed with a child, Chura one year later.

Subsequently, Mr. Pundamilia purchased ten (10) acres of land in Pweza County and two (2) vehicles one of which he gave Fisi for her daily use. Mr. Pundamilia also informed Fisi that she could utilize the land in Pweza County. Fisi developed the land in Pweza County and began farming. She also put up a four (4) bedroomed bungalow on the land utilizing her own resources from her "mitumba" business.

Mr. Pundamilia and Fisi and the children Fisilet and Chura continued living in the said bungalow as a family. Mr. Pundamilia took care of all the financial needs of the children. The neighbours and the community at large admired the family of Mr. Pundamilia and Fisi.

Two months ago, Mr. Pundamilia and Fisi formed an investment company and agreed that Mr. Pundamilia would assign all his properties to be held and owned by the investment company. Fisi would also transfer her *mitumba* business to the investment company.

Not long thereafter while on the way to his lawyer's office to execute the deed of assignment to transfer his properties to the investment company, Mr. Pundamilia collapsed and died.

Mrs. Pundamilia has returned to Kenya for the burial of her husband. She has informed the burial committee that Fisi was only a househelp and should be left out of the funeral arrangements.

After the burial, Fisi is informed by the funeral committee that she must vacate the four (4) bedroomed bungalow as Mrs. Pundamilia would be moving in, in seven (7) days. Fisi visits your chambers for legal advice on the following issues.

- (a) Fisi informs you that she came across the following statement and is puzzled as to its significance to her case:

"Section 3(5) of the Law of Succession Act, 1981 has been rendered redundant by sections 6 and 9 of the Marriage Act, 2014"

Using provisions of the Law of Succession Act, 1981 and the Marriage Act, 2014 as well as relevant case law, critically analyse the above statement. (8 marks)

(b) The entitlement or otherwise of all other persons named in the above narrative vis-à-vis the estate of the deceased having regard to relevant Kenyan statutes and case law. (7 marks)

(c) Applicability or otherwise of Alternative Dispute Resolution (ADR) to succession matters. (1 mark)

(d) The specific steps and legal processes to be taken to pursue the claims of Fisi and her children.

Advise Fisi accordingly.

(4 marks)

QUESTION TWO

Mr. and Mrs. Pembe Tatu were married thirty (30) years ago at a Catholic Church in Sokure Mtu County. They have three children, Piramidi, Mraba and Mviringo. Mr. and Mrs. Pembe Tatu duly executed their wills in the year 2010. Mr. Pembe Tatu's will contained the following relevant provisions:

"

- (i) Direct that all my just debts, funeral expenses and administration expenses be paid.
- (ii) Give and bequeath the sum of Kshs.5 million to my Trustee hereinafter named to be held in trust to pay the income of my children in equal shares during their lives, or to the survivor of them, and upon the death of the later of them to die to pay the income to their children in equal shares with the principal to be paid to such children in equal shares when the youngest of the reaches the age of 25.
- (iii) I give the rest, residue and remainder of my estate to my wife."

Mrs. Pembe Tatu wrote a will that contained reciprocal provisions to that of Mr. Pembe Tatu's will save that the amount she has given to the Trustee in clause (i) is 2 million. Mr. and Mrs. Pembe Tatu have been living with Duara the youngest sister of Mr. Pembe Tatu and they have been taking care of all her financial needs as she studied law at a local university.

Two months ago Mr. and Mrs. Pembe Tatu were in the bank when armed robbers stormed in and shot three persons including a security guard. Mr. Pembe Tatu died instantly while Mrs. Pembe Tatu died from her injuries the following day.

Mr. and Mrs. Pembe Tatu are survived by two children as their first born Piramidi who was born one year prior to their marriage had died while serving in the army. Piramidi was survived by his wife and two children aged ten (10) and five (5) years.

Subsequent to the execution of their wills in 2010, Mrs. Pembe Tatu executed a new will in 2015 which expressly revoked any and all wills previously made by her. She did not like the terms of the new will and physically destroyed it by her own hand.

During one of the meetings for funeral arrangements, a woman who introduced herself as Lumbwi visited the home accompanied by a child who resembled Mr. Pembe Tatu. She claimed to have conceived the child with Mr. Pembe Tatu and that she was his girlfriend for ten (10) years. She therefore regarded herself as his widow.

At the reading of the will, it became apparent that the wills of Mr. and Mrs. Pembe Tatu were signed in the presence of Piramidi and the lawyer who prepared the wills as witnesses. Each had executed the wills as witnessed. The lawyer was named as Trustee of the will.

The Chairman of the funeral committee is your friend and has requested Mraba, Mviringo, Duara and the wife of Piramidi to approach you for legal advice on the following:

- (a) Validity or otherwise of the wills under the Law of Succession Act (Chapter 160, Laws of Kenya). (5 marks)
- (b) Entitlements or otherwise of all persons named in the above narrative vis-à-vis the estate of the deceased having regard to relevant Kenyan statute and case law. (3 marks)
- (c) The specific steps and legal processes to be taken to pursue the claims of Mraba and Mviringo to their parent's estates. (2 marks)

QUESTION THREE

Mr. Samawati is a vintage car collector and enthusiast who regularly attends the Concours d'Elegance. He is married to Mrs. Samawati and they have one child Zambarau.

In December 2010, Mr. Samawati acquired his most prized vintage car yet, a Mercedes Benz W196. After a series of bad investments he was forced to borrow a loan from a bank and gave his vintage cars as security. He also became diabetic and hypertensive.

Mr. Samawati's life was becoming unbearable and one day he wrote a letter to Zambarau, "I give you the Mercedes Benz W196 vintage in celebration of our wedding. You can take possession of the Mercedes Benz W196 upon my death, but I want to keep possession of all my vintage cars as long as I live including the Mercedes Benz W196". The vintage cars remained in Mr. Samawati's possession until he died last year.

After the funeral, a woman visited the home with a two year old boy who resembled Mr. Samawati. She introduced herself as Nyeusi, a girlfriend to Mr. Samawati for five years and she claimed that she had conceived the child with Mr. Samawati.

Extended family members have now requested Mrs. Samawati, Zambarau and Nyeusi to approach you for legal advice on the following:

- (a) Whether each of the parties named in the narrative is entitled to a share in the estate. (4 marks)
- (b) Whether the Mercedes Benz W196 should be included as part of the deceased's estate. (3 marks)
- (c) Whether the bank's security interest survives the gift of the Mercedes Benz W196. (3 marks)

QUESTION FOUR

Mr. Jemedari, now deceased, was born a soldier. From a tender age he admired his father, a Lieutenant Colonel in the army. Despite being admitted to Sokwe Mtu University to study law, he chose a different career path and joined the Defence Forces.

In the year 2015 while on duty in the war torn Country Kona Mbaya, Mr. Jemedari made a will which contained the following provisions:

- (i) I give and devise my residence to my daughter Sopedu. I have only one daughter.
- (ii) I give and bequeath Kshs.1 million to the Sokwe Mtu veterans foundation.
- (iii) I give, devise and bequeath all of the rest, residue and remainder of my estate to my wife.

Mr. Jemedari had a son who was not mentioned in the will.

Mr. Jemedari called his two friends to witness the will. He signed the will but before his two friends could sign the will there was a loud explosion and all three were killed instantly.

Mr. Jemedari's wife, daughter and son have come to your chambers for legal advice with instructions to take the necessary action. As their Advocate, advise them on:

- (a) The validity or otherwise of the will. (6 marks)
- (b) The legal steps necessary to pursue their claims to Mr. Jemedari's estate. (4 marks)

QUESTION FIVE

Mrs. Farasi is a young widow. She has three children aged 12, 9 and 3 years. She was married to Mr. Farasi who was twice her age.

Mr. Farasi, now deceased, was a wealthy man and influential businessman. He was owed money amounting to Kshs.500,000/- by several people which remains outstanding to date. He kept several horses, two of which he had purchased prior to his death but were not fully paid for. He owned 1,000 acres of land in Sokwe Mtu County, 10 acres of which have been occupied by squatters since his death last year. He also owned land in Haramu County whose title documents cannot be traced, in fact the exact location of the land is not known.

Prior to his death he had informed his best friend that he had acquired all this wealth for his children and that a trust fund should be set up for his children in the event of his death. Mr. Farasi did not leave any money in his bank account. Mrs. Farasi has been appointed the Administrator of the estate of Mr. Farasi. She has approached you for legal advice as she needs to pay school fees for the children and there is no money in the bank account.

- (a) Explain to Mrs. Farasi her powers and duties as the Administrator of the estate of Mr. Farasi. (6 marks)
- (b) Advise her what steps she should take to obtain money for her children's school fees. (4 marks)

QUESTION SIX

Prior to confirmation of grant of Letters of Administration, Kiroboto approached his mother Malaika for a loan of Kshs.5 million to purchase a house in a gated community and he has limited booking period. Malaika is the Administrator of his late father's estate valued at Kshs.20 million. Kiroboto has two other brothers.

Mrs. Malaika has approached you for legal advice on the following:

- (a) How she should deal with Kiroboto's request and on what legal basis. (3 marks)
- (b) If she agrees to advance the loan of Kshs.5 million, demonstrate how the sum should be reflected in the Memorandum, Schedule of Assets and Cash Account. (3 marks)
- (c) Barclays Bank PLC based in London is holding an equivalent of Kshs.5 million. How can she access this sum in order to advance a loan to Kiroboto? (3 marks)
- (d) If the deceased had written a will how would she have dealt with the request? (1 mark)

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END