

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.

ATP 102: PROBATE & ADMINISTRATION

FRIDAY 20TH JULY, 2018.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **SIX (6) 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. & Mrs. Black Panther were driving home after enjoying their Valentine's dinner. They began reminiscing about their wedding forty years ago at St. Bakita Chapel when all of a sudden they saw a lion lying in the middle of the road. This frightened Mr. Black Panther, who swerved to avoid hitting the lion but hit the guard rail which penetrated the wind screen of the vehicle hitting Mr. Black Panther who died on the spot. Mrs. Black Panther was rushed to a nearby hospital. She was treated and discharged.

Mr. Black Panther was buried two weeks later at their matrimonial home in Sokure Mitu County which he owned with Mrs. Panther as joint tenants. Mr. Black Panther at the time of his death owned the matrimonial home, two cars, a Lexus and a Range Rover, fifty 50 acres of land in Zambarau County, two hotels, ten vintage cars, Simba TV Station, Fish Farm measuring 50 acres and an apartment block in Bululu County attracting rental income. He held several bank accounts.

Ten years ago Mr. and Mrs. Black Panther had visited their Advocate's Chambers with instructions to prepare their Wills. Mr. Black Panther's instructions were as follows:

- (i) That he was bequeathing all his properties to his lovely wife Mrs. Black Panther if she survives him.
- (ii) That if she fails to survive him or if she dies in close proximity to him then the properties were bequeathed to his biological children in equal shares. He listed his children as A, B, C, D & E."

Mrs. Black Panther's will contained reciprocal provisions to that of Mr. Black Panther. Mr. Black Panther reviewed and signed the will in the presence of two of his children and two receptionists at the office who all signed the will as witnesses. Mrs. Black Panther was in a hurry and promised to return with witnesses to sign which she never did. Mrs. Black Panther had refused to talk to her husband until he had agreed to write his will. Mrs. Black Panther owned her own apartment block in Farasi County. The apartments attract rental income which is deposited into a trust account in her name. It is a life policy trust investment account and she has listed her sons as the nominees.

Mr. and Mrs. Panther were blessed with another child five years ago. They jokingly referred to her as their "retirement baby".

Three weeks after the burial of her husband, Mrs. Black Panther visited the hospital for what was to be a routine check-up. Doctors informed her that she had developed a blood clot that required immediate surgery. She called her two best friends and her children and directed orally that all her property be distributed to her children in the following shares:

- 50% to her first born son (A) so that he could take care of the "retirement baby".
- The remaining 50% to be shared equally between the other children.

She directed one of her friends to reduce her instructions into writing. Mrs. Black Panther died during surgery.

The children of Mr. and Mrs. Black Panther have now visited your chambers for legal advice.

You have visited the home of Mr. & Mrs. Black Panther and recovered three written wills as follows:

- (i) Written will made by Mr. Black Panther ten years ago. However, the will is burnt and only the date is legible.
- (ii) The written will prepared for Mrs. Black Panther ten years ago but not signed or attested to.
- (iii) A written will made and signed by Mr. Black Panther three years before his death attested to by two of his friends; the instructions remain the same and are reciprocal to the will he made ten years ago with the addition of "retirement baby's" name as one of his children.

Advise the children of Mr. & Mrs. Black Panther on the following:

- (a) The different types of wills in the narrative. **(3 marks)**
- (b) The validity or otherwise of the wills in the narrative under the Law of Succession, Act, Cap.160, Laws of Kenya quoting relevant case law. **(6 marks)**
- (c) Whether the children of Mr. & Mrs. Black Panther are entitled to inherit their parents' estates and the 50% per cent share that had been bequeathed to their late brother. Discuss having regard to the relevant statutes and case law. **(3 marks)**
- (d) Whether the woman who claims to have been married to Mr. Black Panther under Customary Law is entitled to inherit as well as her son. Discuss having regard to the relevant statutes and case law. **(4 marks)**
- (e) Draft a sample Codicil amending the will made by Mr. Black Panther ten years ago had he approached your law firm to include the name of "retirement baby" as his child in the will. **(4 marks)**

QUESTION TWO

Dickson, the last born of the late Humphrey who died 10 years ago intestate has been collecting rent for his sole use from shops built by Humphrey along River Road. Dickson's argument is that he is entitled to do so as the administration of Humphrey's estate. The grant has not been confirmed since he obtained it nine years ago.

His nine siblings all of whom Humphrey sired during his lifetime occupy Humphrey's 10-acre land in Ruiru in equal proportions. Dickson has colluded with his other brother David to encroach on a proposed way-leave in the Ruiru land and as a consequence, five of the siblings cannot access their portions. All the siblings have constructed residential houses on the land. Dickson and David have built rental houses on the proposed way-leave. The other siblings wish to construct a proper road, lay water and sewerage pipes on the way-leave and install street lighting. Without their knowledge, however, Dickson has secretly sub-divided the Ruiru land and sold off a portion which includes the way-leave and has obtained title deeds.

Alarmed at the discovery, the siblings rush to court to apply for revocation of grant and for injunctive orders. The court appoints you to arbitrate over the matter and arrive at a just, logical and amicable determination.

Prepare a detailed judgment highlighting the relevant issues for determination and having regard to preservation of the state. **(10 marks)**

QUESTION THREE

Pamela has worked in the banking sector for over 30 years. During this period, she has been a member of a pension scheme and nominated all her four children as beneficiaries in equal shares. Similarly, she has taken out a life policy valued at Kshs.20 million and named the said children as the beneficiaries.

Over time she has been taking loans from her SACCO and managed with the assistance of her mostly jobless husband Job to construct a four-bedroom house in Syokimau, rental houses in Utawala and to buy a pickup. The SACCO shares are now valued at Kshs.5 million but she has not named her next of kin yet. She hopes to do so once she repays the outstanding loan balance of Kshs.3.5 million.

One year ago, on 1st January 2017 while crossing the road Pamela was hit by a speeding motor vehicle and died on arrival at the hospital.

Her children all of whom are at the University have no objection to their father being named as the administrator of Pamela's estate. In his application for Confirmation of Grant, he lists the pension dues, SACCO shares, life policy, the matrimonial home, rental houses and the pick-up as the assets of the estate.

As a Judge before the matter is before you for determination. With the aid of applicable law and case law, write a reasoned judgment clearly determining the assets available for distribution. **(10 marks)**

QUESTION FOUR

Mr. Salamanda died three weeks ago at a hospital in Mji Wa Furaha Republic. Mr. Salamanda was a wealthy businessman with a vast empire and was also an oil tycoon.

The late Mr. Salamanda was a polygamous man. He had been married to the late Mrs. Salamanda in a lavish wedding and they were blessed with ten children. After the death of Mrs. Salamanda he had married Pundamilia with whom he later separated. He had three children with Pundamilia. They lived in a home in Twiga Estate which they co-owned as joint tenants. At the time of his death he was cohabitating with Ms Fisi with whom he had one child, a minor of school going age.

You are an Advocate of the High Court of Kenya dealing with Probate and Administration matters in Nairobi. The children of Mrs. Salamanda have come to your chambers for legal advice to handle their parent's estate.

As you are recording their statements you learn that the Mr. Salamanda died testate leaving behind two wills. Further you learn that five months ago they forcefully took their father from his posh villa in Twiga Estate. Prior to that he had been sickly with diabetes for over 4) years and had also lost sight in one eye and had about 40% vision in the other eye. They had not seen their father for over two years and had been denied complete access to his residence.

They play a video footage of how they broke into the posh villa in Twiga Estate and rescued their father who was feeble and very sick. He appeared delirious and dehydrated. They were accompanied by a doctor who carried out a brief medical examination and certified that he was in need of medical attention as he had been neglected and denied food and proper care by Ms Fisi with whom he was living at Posh Villa in Twiga Estate.

The children flew their father to Mji wa Furaha Republic on the same day for specialized treatment accompanied by the doctor. He was discharged from hospital and continued to stay in Mji wa Furaha Republic with one of their siblings.

While in Mji wa Furaha Republic the children learnt from their father that one week before they rescued him. Ms Fisi and her lawyer Mufasa came to him with a document and a pen and told him to sign. After he had signed they explained to him that it was his last will and testament. He also stated that the cooks would whisper to him that Ms Fisi and Mufasa were sharing the master bedroom at night. They show you a copy of the said will and it is dated, signed by the testator Mr. Salamanda, is also attested to by two witnesses who you learn are the domestic help and gardener. You now refer to the will as the Twiga Estate Will.

You are further informed that prior to signing of the Twiga Estate Will their father had been given some drink by Fisi and he began to act intoxicated just before being convinced to sign the will.

You learn from the children that while in Mji wa Furaha Republic their father executed another will while admitted in hospital. You refer to it as the Mji wa Furaha Republic Will. The will was signed by the testator and attested by 2 doctors and in it the deceased revoked the Twiga Estate Will.

A close scrutiny of both wills shows that the Twiga Estate Will bequeaths the estate to Ms Fisi while the Mji wa Furaha Republic Will bequeaths the estate to the children of Mrs. Salamanda. The Court had 20 years ago declared Twiga Estate Villa as matrimonial property belonging to Mrs. Salamanda.

- (a) In light of the above narrative, explain specific grounds upon which the wills may be invalidated by the Court citing relevant case law. **(6 marks)**
- (b) Advise the children of Mrs. Salamanda on the specific steps and legal process to be taken to pursue the children's claims to their father's estate should the Wills be invalidated. **(4 marks)**

QUESTION FIVE

Mr. Mwitw died testate having executed a will in the year 1998. He owned 40 acres of land being Title Number 007 situate in Mwalimu County.

In 2010 he had subdivided the land and four equal portions were created out of it being title numbers 007(a) to (d) situated in Mwalimu County. Mr. Mwitw then transferred Title Numbers 007(a) & (b) to Nyeusi and he retained Title Numbers 007 (c) and (d).

Mr. Mwitw in his will had bequeathed Title Number 007 to his wife Mrs. Mwitw and their children. Mrs. Mwitw predeceased her husband.

The children have visited your Chambers for legal advice. They are concerned whether the distribution of Title Numbers 007 (c) and (d) can be made under the will or whether the actions of their late father in bequeathing the land to them and their late mother and later subdividing and selling off two of the portions invalidated the Will.

Advise them accordingly citing relevant provisions of the Law of Succession Act.

(10 marks)

QUESTION SIX

You have obtained Letters of Administration appointing you as the Administrator of the estate of Mr. Samawati. List of deceased assets are as follows:

- (i) Residential house worth Kshs.50 million.
- (ii) Three (3) vehicles worth Kshs.10 million.
- (iii) Five horses worth Kshs.30 million.

The deceased at the time of his death had borrowed the sum of Kshs.5 million from his bank. The school fees for the children is due and his wife has borrowed the sum of Kshs.2 million to pay school fees amounting to Kshs.500,000/- and the balance she will set up a salon business.

The deceased held an account with HBST, a foreign bank which holds a sum equivalent to Kshs.3 million. The HBST Bank is situated in the United Kingdom. The funeral expenses amounting to Kshs.500,000 were paid by his business partner and he has requested for a refund.

- (a) Demonstrate how you would reflect the above sums in the Memorandum, Schedule of Assets and Cash Account. **(6 marks)**
- (b) Explain how you will access the funds in HBST Bank. **(4 marks)**

END