

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

WEDNESDAY 18TH JULY, 2012

DURATION: 3 HOURS

Instructions to Candidates

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

PLEASE TURN OVER

SECTION A

1. Mr. Lemu, a wealthy man, was murdered seven months ago. Before his murder, the deceased was a farmer and had cultivated and planted maize on one thousand acres of his Maji Safi Farm in the Rift Valley. However, shortly after his crops sprouted, a strange disease that turns maize leaves brown in colour attacked, resulting in total loss of the crop.

Upon the loss of his maize crop, Mr. Lemu suffered a massive stroke and was paralyzed on the right side of his body. He was admitted to the intensive care unit of a Nairobi Hospital. Three weeks later, he began to recover and was able to walk with the aid of a nurse, at which period he invited his lawyer to draw up a will for him.

While still at the hospital, Mr. Lemu gave his lawyer the following instructions:

Firstly, that his entire estate be inherited by his two sons, Yakobu and Yosuwa, to the exclusion of his wife Yemami.

Secondly, that all his suits and his Omega watch be given to his brother Kokayi who had been by his side since admission to hospital.

Thirdly, that all his shoes be given to his pastor who had been praying for him to get a seat near the twenty elders who worship God day and night.

Fourthly, that all his goats be given to his herdsboy who had been working for him for many years.

He insisted, contrary to your legal advice, that there was no need to sign the will because his right hand was paralyzed as a result of the stroke. He requested you to keep the will for him and give it to his wife upon his demise.

After the lawyer's departure Mr. Lemu invited his two sons and his wife and informed them that he had made a will and the same was with the lawyer. He also requested his sons to take care of their mother when he died.

Two months later, Mr. Lemu recovered fully and was discharged from hospital, after which he went about his farming activities. At his residence, his family welcomed his recovery except his son, Yosuwa who had started planning what he would buy with his inheritance. Consequently, he planned to eliminate his father. A month later, Mr. Lemu was found hanging by his cowshed. The postmortem showed that he died as a result of strangulation, at which time investigation on the murder ensued and Yosuwa was arrested, charged and convicted of the crime. He is now awaiting to be hanged at Mlima-Chungi Maximum Prison.

Mrs. Lemu and her son Yakobu have come to you for legal advice regarding the will and Yosuwa's inheritance.

Advise them and explain in detail the legal steps you will take in dealing with Temu's estate.

(15 marks)

2.

- a) Mr. Aoge, a rich polygamous man, died intestate three months ago survived by three widows and five children. After the funeral, the children started fighting over his wealth. In fact, some have been collecting rent from the deceased's estate without the knowledge of the other family members. The Chief of the area has prevailed upon them to seek legal advice which they have agreed to do. They have come to you for legal assistance.

Set out in detail the specific steps you will take so as to achieve lawful resolution of the matter.

(7 ½ marks)

- b) With the aid of decided cases discuss the effect of section 3(5) of the Law of Succession (Chapter 160 of the Laws of Kenya) on Kenya's families, especially married couples who contracted statutory marriages.

(7 ½ marks)

3. Mary, a Senior Civil Servant, died intestate leaving behind three children namely Jane, 12, Tom 17 and Jerry, 18. Her estate consisted of 3 acres of land in Runda, a flat in Karen and a piece of unregistered land which she bought through Kwale Land Buying Co. She was also owed a sum of Kshs.600,000/= by her friend Sijali and had resolved to file suit for recovery of the same shortly before her death. She also owned a car Reg. No. KXT 0001.

After her burial, the family met and agreed that in order to mitigate wastage of the estate, the car should be sold immediately and the proceeds used to pay school fees for the children. They also decided that Judith, Mary's sister, should commence the debt suit immediately.

The very next day Judith drew up a plaint and filed it immediately. Judith and one of her uncles Mpole, then applied for letters of administration. In the meantime the boys turned 18 and 19 respectively and obtained ID cards. Kwale Land Buying Co. directors decided to register the land in the names of the boys so that the title deed would be processed in their names. The boys have now obtained the title document and want to sell the land. The date for confirmation of the grant has been fixed in 6 months' time.

Mpole believes he has done nothing wrong but just to be sure, he seeks your advice. Advise him accordingly.

(15 marks)

4. Rafael had suffered from throat cancer for several years. Sometimes in January this year he became severely sick and bed ridden. He called his trusted servants Imani and Faith. He gave Imani the logbook of his car telling him that he wanted Imani to have the car "when all this is over". He told Faith that his land which she used to plough would be hers upon his demise.

The very next day he obtained a wonder drug from his doctor and within the following three days he was out and about. However a scan showed that he still had the cancer, but he felt well enough to do all his duties.

Sometime in March he was walking from town when he was hit by a speeding car and died instantly. He left behind a wife and a child.

- i) Imani and Faith have come to you for advice as to whether they have a claim on the property left to them by Rafael.
- ii) The widow has filed for a grant leaving Faith and Imani out. What would they do in order to be included?

(15 marks)

SECTION B

5. As part of the ongoing reforms in the judiciary, the Chief Justice has directed that a handbook be prepared to serve as a guide to all personal representatives upon their appointment as such by the courts.

You are the new head of the Family Division of the High Court and it is now your responsibility to implement the directive by the Chief Justice.

Set out the key highlights of your handbook paying particular attention to the powers and duties of personal representatives as set out in the Law of Succession Act (Chapter 160, Laws of Kenya), indicating the consequences of non-compliance with those duties.

(15 marks)

6. The net estate of Tindo, a widower who died intestate, comprises the following:

- a) L.R No.208/400 valued at Kshs.5 Million (family house)
- b) Motor Vehicle valued at Kshs.500,000/=
- c) 2,000 ordinary shares in Novuko Co. Ltd valued at Kshs.400,000/=
- d) Cash in the bank (KCB Moi Avenue Branch) Kshs.800,000/=

Prior to distribution, the administrators had exercised their power under Section 38 of the Trustee Act in favour of Annoni, one of the beneficiaries, to the tune of Kshs.300,000/. There is an outstanding mortgage debt of Kshs.1Million on the house and the estate's lawyers are owed Kshs.50,000/ in legal fees.

Taking into account the intestacy provisions of the Law of Succession Act, draw up the distribution account for the estate among Tindo's five children. No property will be taken *in specie*.

(15 marks)