

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

FRIDAY 31ST JULY, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should 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

SECTION A

1. Mr. Rocher owned a fifty acre piece of land in Olesafi where he built a palatial home. He also practiced some farming.

One month ago, Mr. Rocher, his wife Nasita and three children, Mercia, May and Juma decided to travel from Nairobi to their rural home for a week-end rest. Upon their arrival, they were shocked to see huge rocks and mud on the location where their home stood. At that juncture, they decided to rush to a police station, five kilometers away, to inquire about what had caused the disappearance of their house, staff, cows, chicken and goats.

At the police station, Mr. Rocher and his family were informed that after a recent heavy downpour, all the homes, people, animals, poultry and trees were swept away by floods. Mr. Rocher could not believe that his favourite home was no more. He began to mutter incoherently. His wife and children tried to console him in vain. Consequently, they decided to return to their city home. Unfortunately, Mr. Rocher died of a heart attack on the way to Nairobi.

Two weeks before Mr. Rocher's demise, he had displayed strange behavior and believed that he was about to die as he had been having nightmares that his family and friends were organizing his funeral at Panganisa Cemetery, at which time he decided to write a will. Subsequently he went to his Advocate's chambers to give her instructions on the contents of his will as he had many properties in the whole country and did not want his relatives to wrangle over them.

Mr. Rocher's instructions were as follows:

- (i) That he wished to bequeath to his two lovely daughters, Maria and May, all his houses in Karen and nothing to his naughty son Juma or his wife Nasita because she had stopped cooking him his favourite dish of Omena and Wimbi-Ugali.
- (ii) That he was bequeathing his wheat crop in his Transkele farm in Kilimali to his sister Rina.
- (iii) That he was bequeathing his neighbor Jirani his house in Runda because Jirani had been begging him every time they met for a drink to leave him some property to remember (him) Rocher by.
- (iv) That he was bequeathing his uncle Telokoman his hotel, Zaka in Westlands because Telecoman had been telling him that if he (Rocher) did not leave him some property, Telecoman would ensure that Rocher burned in hell for eternity, as he would hire witchdoctors to bewitch him.
- (v) That he wishes to bequeathe his brother Tomano all his ties, shirts, shoes and suits.

Finally, Mr. Rocher told his Advocate that since he was about to die he wished to leave her his Prado, Registration No. KYZ 120C for being a friend in need. He proceeded to give the Advocate the car keys to keep.

After giving instructions, Mr. Rocher left his Advocate's chambers and promised to return with witnesses to sign the will. The next day, Mr. Rocher returned with his two daughters. He signed the will and his daughters signed as witnesses against his advocate's advice as he did not want anybody else to sign it.

Upon Mr. Rocher's demise, the immediate family members started to organize his funeral. During the burial arrangements, a woman came to the home with a two year old boy who was the spitting image of the deceased. On being asked why she had come, she said that she was Mr. Rocher's girlfriend during his lifetime and he had sired her son; she therefore regarded herself as his widow. Nasita was infuriated and chased her and her son away.

Before long, two other women arrived at the home. The first woman, Jerusha, claimed that she was married by the deceased but divorced twelve years ago, and that in fact, the court had awarded her the deceased's farm in Kari, Nakuru where she lived. She therefore regarded herself as his widow.

The second woman, claimed that she was the deceased's stepmother and that she used to depend on him for her upkeep since her husband (Mr. Rocher's father) had died five years earlier. She requested that the same assistance be upheld and further stated that she needed school fees urgently for her grandchildren who were due to return to school in two weeks' time.

After Mr. Rocher's burial, his Advocate read the will to Nasita and her children, but Nasita dismissed the contents of the will, and took the car keys from the Advocate by force. However, family members requested Nasita and her children to approach you as a prominent Advocate, for legal advice on the following:

- (a) The validity of the will under the Law of Succession Act (Chapter 160, Laws of Kenya).
(7 marks)
- (b) The entitlements or otherwise of all the persons named in the above narrative vis-à-vis the estate of the deceased, having regard to the undernoted statutes as well as case law:-
 - i) The Constitution of Kenya, 2010;
 - ii) The Law of Succession Act
 - iii) The Marriage Act, 2014;
 - iv) The Matrimonial Property Act, 2013.(10 marks)
- (c) The specific steps the above claimants should take to pursue their claims, taking into consideration the key given to the Advocate.
(7 Marks)

Advise them accordingly.

2. Mr. Bahama died testate two months ago, survived by his widow Rehema and two grown up sons, Mahe and Zaki. A month prior to his demise he drew a will and kept in his safe. Thereafter he went about normal activities in his large farm.

One day, Mr. Bahama called his wife and sons for a family meeting. At the meeting, he disclosed to them that he was suffering from cancer, but they had nothing to worry about because he had made a will in their favour. He also told them that he had deposited a substantial amount of money for their use in the London Barclays Bank, Midland Branch. After the meeting, he went for a walk around his large farm.

Two hours later, Mr. Bahama returned to his farm-house. On reaching the courtyard, he heard his sons talking animatedly to each other. Zaki was telling Mahe that he was getting impatient because the old "buda" was taking too long to die. He went on to say that he wanted to get his share of the estate immediately, especially the money in London, as he wished to fly to Mali Island in the Indian Ocean for a fun-holiday with his friends.

When Mr. Bahama heard his son call him "buda" he walked away crestfallen, muttering to himself that his good-for-nothing sons would not inherit his property as he was going to delete their names from his will. At that juncture he went to his safe, removed the will and tore it into several pieces after which he put the pieces in an envelope and threw the envelope into the safe. Mr. Bahama died that night.

After the burial, the widow and her two sons went to the family Advocate to seek legal advice on the following issues:

- (a) The status of the will. (8 marks)
- (b) How they can access the funds in Barclays Bank, Midland Branch urgently. (4 marks)

Advise them accordingly.

3. Discuss the differences between the doctrine of lapse and ademption under the Law of Succession Act (Cap.160, Laws of Kenya). (12 marks)

SECTION B

4. The Law of Succession Act requires personal representatives, as trustees of a deceased's estate, to maintain detailed records of all matters relating to the administration of estates. Discuss the following in depth:-
- (a) The requirements of satisfactory systems of trust accounts under Section 83 of the Law of Succession Act. (8 marks)
 - (b) The rights of beneficiaries in respect of estate accounts before distribution of the estate. (4 marks)

5. Mr. Johamise has been appointed an Administrator of the estate of Kamusia and upon receipt of a confirmed Grant of Letters of Administration he wishes to distribute the estate. However, he is facing some challenges because the tenant-for-life and two remaindermen are claiming entitlement to money belonging to the estate. Some of the money was received by the deceased just before his demise while the rest was received after Mr. Johamise's death.

As an Advocate of the High Court of Kenya, advise Johamise how to handle the matter, by illustrating your response with practical examples.

(12 marks)

6. Ms Mjuaji was appointed the administrator of Mzee's estate, who died eight months ago. Mzee was survived by Mjuaji and two brothers.

Upon receipt of the confirmed Grant of letters of Administration, Mjuaji sold all the assets of the deceased's estate and instead of sharing the proceeds with her two brothers, she ran away to Zanzibar where she could not be traced easily.

The two brothers have come to your chambers for legal advice and to give you instructions to take the necessary action to recover their share from their sister, Mjuaji.

As their Advocate, advise them as to the legal steps necessary to recover their share.

(12 marks)