

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 cohabittee 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. Johny 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)
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