

THE KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

PROBATE AND ADMINISTRATION – ATP 102

21ST NOVEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question ONE, and THREE OTHER Questions at least One of which must be from Section B.
- (b) All questions carry fifteen (15) marks each.
- (c) Marks may be lost for illegibility.

PLEASE TURN OVER

SECTION A

1. Mr. Mwisho's friend died two months ago, and since his demise his widow, children, parents and siblings have been fighting for control of his large estate. However, Mr. Mwisho does not want such an occurrence to happen to his family when he dies. He, therefore, wishes to leave a will which shall not be challenged, and has decided to seek legal advice from you, his lawyer of 20 years.

Discuss in depth, with the aid of statutory provisions under the Law of Succession Act (Chapter 160 of the Laws of Kenya) and case law, the requirements and formalities of valid wills and what happens if the deceased had acquired more property and did not include them in the will.

(15 Marks)

2. Mr. Monosi, a wealthy man drew a will and bequeathed his estate to his wife, Sara, two sons Toma and Unis as well as his daughter Fanusi. After drawing the same he signed it, and decided to take it to his best friends Joakim and Mwihenu to witness it. Before leaving his residence, he invited his friends to meet him at Ka-chupaa Bar and Restaurant for drinks and roast meat. Whilst waiting for their order Mr. Monosi produced his home-made will and the two friends signed it appropriately.

After a couple of drinks Mr. Joakim began to cry saying:-

"Oh God Almighty, my friend Monosi is on the way to your Kingdom, please receive him as he is my best friend."

At that juncture, Mr. Monosi was taken aback and consoled Joakim, explaining to him that writing a will does not mean that one is about to die.

However, before Mr. Monosi finished explaining, Mr. Mwihenu interjected and told him not to take such a document to his house because according to Customary Law of the Mati tribe, to which Mimosi belongs such an act portends a bad omen. He further told Mr. Monosi to go for legal advice on how he can deal with the document in accordance with the relevant provisions of the Law of Succession Act.

Mr. Monosi left in a hurry and went to see his Advocate for legal advice.

With the help of statutory provisions under the Law of succession, and case Law, enunciate in depth what the Advocate stated.

(15 Marks)

3. John's father Tano died on 6th October 2013 as a result of being knocked down by a lorry in a road traffic accident. Tano was at that time suffering from terminal cancer. Just before he was knocked down he (Tano) had called John and told him that he has given the key of his Toyota Motor vehicle Registration No. KAB 001 to Njirani. Tano told John that Njirani should have the car and that he had informed Njirani of the same.

After Tano's burial John comes to the office in which you are serving pupillage, and seeks your advice.

- (a) What claims if any does Njirani have over Tano's Estate.

(10 Marks)

- (b) What preliminary steps in succession does John need to take in order to validly initiate a case against the owner of the lorry which killed his father?

(5 Marks)

4. Lucy had just completed basic training at the Kenya Defence Forces Training College when she was deployed to Somalia. When Lucy heard this she went to her mother and told her that she (Lucy) wanted her sister Mary to take all her property if she died. Lucy left for Somalia the next day. On reaching Garissa, within Kenya, their convoy was ambushed and she was killed.

Her husband Munyange comes to you and tells you that he was solely dependent on the deceased ever since they got married five (5) years ago as he was unemployed.

He wants to know the following:

- (a) Whether Mary has any claim to the estate of Lucy.

(10 Marks)

- (b) What claim, if any, does he have on the estate, and how to obtain it.

(5 Marks)

SECTION B

5. Personal representatives have a duty under the Law of Succession Act to maintain pertinent documents pertaining to the estate of a deceased person before distribution.

With the aid of statutory provisions, detail all such documents, explaining their use and the duration for which the personal representative should keep them after distribution of the estate.

(15 Marks)

6. Explain the powers and duties of Administrators and Executors, and of the Public Trustee under the Law of Succession Act and Public Trustee Act respectively.

(15 Marks)

