

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

WEDNESDAY 31ST JULY, 2013

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. Jenö, a wealthy man, died testate a month ago survived by two widows, one married under the Marriage Act, Cap. 150 Laws of Kenya and the other married under customary law. The widows had three children each of majority age.

During the funeral arrangements, a woman and her two daughters came to attend the meeting but were chased away by the two widows. However, she shouted that she was the deceased's widow as she used to cohabit with the deceased in Shambani Estate, Westlands.

Furthermore, another woman came to the deceased's premises with a young child. She claimed that she was the deceased's girlfriend and that the deceased used to give her money for the child's upkeep.

Finally the deceased's mother appeared screaming loudly stating that she would now be destitute since the deceased was her only son and used to take care of her.

Whilst mourners were outside the house, the deceased's brother took the deceased's clothes, shoes, an Omega Watch and some household goods and drove off with the deceased's car.

The deceased had left a will in which he had named only his two widows and six children. After the burial of the deceased the two widows and their six children have come to you with the will.

In the meantime, the deceased's mother, the cohabitee and the deceased's girlfriend have gone to see another Advocate for advice.

- a) Discuss the advice that you and the other Advocate would give each of the persons involved. **(9 marks)**

- b) Discuss the specific steps that you and the other Advocate would take to ensure that your clients get their respective shares of the estate if at all. **(6 marks)**

2. Asker comes to your chambers and tells you the following:

"My father had two wives and he died without leaving a will. I have three younger brothers aged 10 to 16 years. My step-sister Mary who is an adult took out letters of administration of my late father's estate. She did not mention me, my brother and my mother in any of the documents. Mary only mentioned her mother and brother aged 10. Mary is the sole administrator of the estate. I don't think this is fair. Please help me."

- i) Asker needs your advice on the issues and what actions can be taken to ensure that she, her mother and her brother get their rightful share. **(10 marks)**

- ii) Asker's mother owns a house together with her late father. Asker noticed that it is among the properties that have been listed as part of the deceased's estate. Asker wants to know the implications of this with regard to the Law of Succession. **(5 marks)**

3. Losa's husband Joti died about a year ago. He did not write a will. Losa has not done anything about the estate of her husband. Losa was recently served with a document stating that if she did not take letters of administration one of his debtors named Woti would take out letters of administration. She has come to you for your advice.

a) Advise Losa as to the nature of the document with which she was served.

(5 marks)

b) What specific legal steps must Losa take with regard to her husband's estate in order to avert Woti's intended action?

(10 marks)

4. Jay's father died a month ago. About a year earlier when he was very sick he called Jay to his bedside gave him the key to the tractor and said, "When I die the tractor will be yours." He later on recovered and asked Jay for the tractor key and Jay gave it back. He died while Jay was away on Safari. Jay feels that had he been at home he would have given him the tractor.

Jay has come to you for advice as he feels that his father had intended to give him the tractor and he wants to keep it. Advise him as to the issues surrounding ownership of the tractor.

(15 marks)

SECTION B

5. Section 83 of the Law of Succession Act (Cap.160, Laws of Kenya) provides that personal representatives shall have the duty, *inter alia*, to produce to the court a full and accurate account of all dealings with the estate of the deceased.

(a) Explain in detail the nature and purpose of the kind of records envisaged by this section.

(8 marks)

(b) Discuss in detail the powers and duties of Administrators/Executors and the Public Trustees.

(7 marks)

6. The Administrator of the Estate of Otieno Onyango (deceased) has approached you for legal advice on the following matters:

(a) The tenant-for-life and the two remaindermen are claiming entitlement to certain monies belonging to the estate. Some of the money was received by the deceased just before his death while the rest accrued or was paid to the estate after Onyango's death.

Illustrating your answer with practical examples, advise the administrator on how to handle the matter.

(5 marks)

- (b) One of the remaindermen, A, has asked the administrator to loan him a sum of Kshs.200,000/- from the estate to enable A to set up a medical practice.

Advise the administrator on the applicable law and show him how to reflect that transaction in the Memorandum, Schedule of Assets and Cash Account. **(5 marks)**

- (c) What considerations must the administrator take into account at the time of distributing the estate? **(5 marks)**
