

COUNCIL OF LEGAL EDUCATION



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES**

ATP 102: PROBATE & ADMINISTRATION

MONDAY 22ND APRIL, 2024.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **SIX (6)** printed pages including the cover page, with a total of **SIX** questions.
- (b) A Candidate **MUST** answer **FIVE (5)** questions.
- (c) Question **ONE** is compulsory and carries **20** marks.
- (d) **All other** questions carry **10** marks each.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

Johnstone was approaching 100 years. He had 3 wives and fifteen children. His estate comprised of:

- 100 acres of prime land in Ushindi district
- Tukutane bar and lodging in utawala town
- Plot No 10 Ushindi town which comprised of 20 bedsitters.
- A land rover vehicle
- A modern town house built on one acre of land in Buxton city, which was owned jointly with his daughter Valeria as tenants in common.

On his 100th birthday, he had a premonition that made him feel his days were numbered on earth. He told his wives and children that he wanted to see them all on 20th August 2014 so that he could give instructions on his wealth. On the said date of the meeting, they all attended except his first wife Angelina as she was feeling unwell. Johnstone did not take this kindly and felt he was disrespected by her. After giving a long speech, Johnstone stated;

“The 100 acres of land I have in Ushindi district shall be divided equally among my children. Tukutane bar and lodging shall be inherited by my grand-children in equal shares and they shall be at liberty to sell it if they are unable to run the business. Plot No. 10 shall be inherited by my 2nd and 3rd wife Maria and Rahab respectively. They shall be dividing the rental proceeds equally and if they sell, they shall divide the proceeds equally. The Land rover shall be inherited by my son Ashton since he has been driving me around in it and has taken good care of it. The one acre in Buxton city shall go to Valeria since she helped me build the house and in case she decides to sell it, she shall give 10% of the proceeds of sale to my dear nephew Johny Johnstone - my Sister Agatha’s son who is named after me. The residue of my belongings shall be inherited by all my wives. My first wife Angelina shall continue living in the house I built her in 1969 as the title is in her name. My dwelling house shall remain a family home for my children, grandchildren and those that will come after them...”

Ashton wrote down his father’s wishes on a piece of paper and his father affixed his thumbprint.

Two months later, Johnstone fell and hit his head on the floor and was admitted in hospital. The injury made him mentally unstable. His wife Rahab visited him with her cousin’s son -Roy who was a lawyer and she told Johnstone that he needed to write a will. In a state of confusion, Johnstone nodded and told Rahab to come with a written document for him to sign. Rahab visited the following day with a document written

LAST WILL. According to the document, Rahab was named executor and all the assets of the deceased were bequeathed to Rahab and her children except for the Land rover which remained with Ashton who was the son of Maria. The Will was executed by Johnstone in his hospital bed and was witnessed by Roy and Rahab. Johnstone died a week later.

- a) In light of the narrative, using case law and relevant statutory provisions, give a legal opinion on the validity of the two wills. **(10 marks)**
- b) Assuming both wills are nullified by the Court, discuss the fate of Valeria and Johnny Johnstone in relation to the one acre in Buxton town. **(4 marks)**
- c) In the event the wills are nullified, identify the would-be administrators and outline the steps the parties have to take towards administration of the estate of the deceased. **(6 marks)**

QUESTION TWO

Linda Johnson died testate. The only asset she had was a five-acre piece of land in Timau where the family house also stood. She was a widow and had 4 children - 3 girls - Esther, Anna and Martha and a boy - Steve. She left a will where she named Bishop Nelson as the executor of the will. As per the will, each child was to get one acre of the piece of land and the remaining one acre would be hived off where the house stood and would devolve to all her children in equal shares. After the burial, her will was read out to all her children by Bishop Nelson. The will had fulfilled all the requirements of a written will. However, it emerged that Steve was disgruntled and felt that he needed a bigger share as he was a man. After a while, the Deceased's daughters got hold of Bishop Nelson and asked him to begin the process of probate. Bishop Nelson became evasive and told them that he did not wish to begin a process when their brother was not in agreement. Two years down the line, Bishop Nelson has still not began the process.

- a) Armed with the will, Esther, Anna and Martha have visited your offices for advice and their matter has been allocated to you for action.
 - i. Explain the pleadings that is required to enable the parties move forward in probate. **(3 marks)**
 - ii. Explain the steps in such proceedings. **(3 marks)**
- b) Assume Bishop Nelson approached you and stated that he was not interested in being an executor or being involved in the estate of the deceased, what would be your advice to him? **(4 marks)**

QUESTION THREE

- a) By her will, Ms. Garry Marion bequeathed her wedding ring and her shares in Evergreen Limited to her daughter Fiphie. After execution of the will, Ms. Marion lost her ring and later replaced it with an identical one. In addition, Evergreen Limited merged with Acacia Limited to form Evergreen Acacia Limited. Ms. Marion passed on and Ms. Veva, the executor of the will, has approached you seeking a legal opinion on whether Fiphie would be entitled to the wedding ring as well as the shares being held at Evergreen Acacia Limited. Relying on the relevant statutory provisions, as well as relevant case law, advise Veva on the issues in question. (5 marks)
- b) Mr. Beba Beba died testate leaving a will which had, among others, bequeathed one of his properties to Mr. Kariri, a business partner who was not related to him in any way. Upon his demise, it was established that the property bequeathed to Mr. Kariri was one of Mr. Beba Beba's houses in Nakuru, valued at the sum of Kshs. 25 million. While Mr. Kariri has welcomed the bequest made to him by the late Mr. Beba Beba, he has also laid a further claim to the estate by informing the family that the deceased owed him an amount equivalent to Kshs 30 million arising from their business dealings. He has threatened to claim the same as a creditor of the estate during the process of probate. The late Beba Beba's family members have vehemently opposed both the bequest as well as the claim of Kshs 30 million.
- Using relevant statutory provisions, as well as judicial decisions, advise the parties in respect of the bequest and the claim for Kshs 30 million. (5 marks)

QUESTION FOUR

Oscar was a wealthy and generous man who was well liked by his community. At 70 years of age, Oscar decided that he has accumulated enough wealth and would start empowering the needy by giving away some of his wealth. He hived off 5 acres of land and subdivided it into half acre plots that he intended to transfer to the neediest families in his village. He brought these families and showed each one of them their allocated plot of land and allowed them to settle in while he processed their new title deeds. On his way to collect the new title deeds from the lands office, Oscar suffered a heart attack and was admitted to hospital for treatment. Despite their best efforts, the doctors informed him that he has less than a month to live and should put his affairs in order. Since he was very grateful to his driver who acted swiftly when he suffered the heart attack, he called his family and said as follows *"I want my driver to have my Range Rover Sport and my Maybach when I die. Make sure you give him the logbook and the keys"* when the family tried to look for the log books, they could not trace

them. They were later informed that the logbooks were held by a bank as collateral for an outstanding loan. Oscar died three days after making this statement. His family has approached you for advice. Using relevant authorities, advise them on the following:

- a) The legal effect of Oscar's generous actions towards the needy families and his driver. (5 marks)
- b) Oscar's family wants to ensure that Oscar's wishes are implemented. Advise them on the proper legal process of achieving this. (5 marks)

QUESTION FIVE

Your old client, a 70-year-old Bwana Mponda Mali, has visited your chambers for discussions relating to his recent anxieties regarding his state of health. He fears that he may not be having a long time to live considering that he has recently been diagnosed with liver failure. He is therefore of the view that he needs to put things straight so that even in the event of his death, then his estate should not waste away. Consequent upon your discussions, he has generated a list of his property and required that you use the information provided therein to draft a will for his review and ultimate execution. The information is as follows;

- i) Name: Bwana Mponda Mali
- ii) Spouse: Janetrix Nyabito
- iii) Children: Claris Mali (30 years old), Jeremy Mali (27 years old), Mwana Kamati Mali (20 years old) and Kazi Ngumu Mali (17 years);
- iv) Money in Bank Accounts: Kshs 2 million held in Account No. 111100321 of Kenya Commercial Bank's Moi Avenue Branch; Kshs 3.2 million in Account No. 444232373 of NCBA Bank's Masaba Road Branch; Kshs 200,000 in Account No. 022132554 of Equity Bank's Harambee Avenue Branch; Kshs 1.7 million in Account No. 22368422 of Absa Bank's Queensway Branch; Kshs 3 million in Account No. 22130007 of Bank of Africa's Reinsurance Branch.
- v) Kshs 2.8 million held as shares in Kila Kitu Sacco Ltd
- vi) Real Property: 2 Ha of undeveloped property registered as Kajiado/Kaputiei/22001; 0.25 acre of developed property registered as Nairobi/Kahawa Sukari/2233; 1-acre family home registered as Mtwapa/Kizingo/1146
- vii) Personal effects: assorted clothes, shoes and necklaces
- viii) Mode of distribution: All property to be distributed to the beneficiaries in the ratios of 2:2:2:3:4 in favor of Janetrix, Claris, Jeremy, Kamati and Ngumu respectively, except cash in the Bank of Africa's Reinsurance Branch which is to be donated to Bwana Mponda Mali Foundation, and the shares in Kila Kitu Sacco to be distributed in line with my nomination(s);
- ix) Witnesses: open

- x) Preferred internment site: my Thurwa residence home next to my late mother's grave
- xi) Executor: Janetrix Nyabito
- xii) Alternate Executor(s): Claris Mali and Jeremy Mali

Using the information provided above, execute Bwana Mponda Mali's instructions.
(10 marks)

QUESTION SIX

Joseph was a very wealthy individual who enjoyed the finer things in life, especially the company of young women. As a person who subscribed to the African traditional customs and traditions, he married his three wives under customary law. From these marriages, he had six children by the first wife Anita, seven children by his second wife Priscilla, and four children by his third wife Jane. In the course of his dalliances with young women, he met and fell in love with Janet, a beautiful model that he supports by paying her rent, her daily needs and for her college education in exchange for her company. He is also occasionally seen in the company of Betty; with whom they share a two-year-old son. He provides for Betty and his son's financial needs.

In addition to his children, Joseph has three young school going boys that live with his first wife Anita. These boys are his late sister's children who he welcomed to his home and treats as his own. In addition to this, Joseph routinely spends around two million shillings a year paying for school fees for various children from his native village. He intends to do this, every year for the rest of his life and wants his children to continue the tradition after he dies. Joseph is always accompanied by his driver and personal assistant Jim. Jim has worked with him for the past 30 years and Joseph has always wanted to reward him, now that he is advanced in age, by giving him a substantial amount of money and a piece of land that he can retire on.

Being a traditional African man, he believes that writing wills was a colonial concept that lawyers use to line their pockets. But, his first wife Anita has convinced him to see a lawyer. He has come to your chambers to consult you. Using relevant statutory provisions and decided cases, advise him on the following.

- a) How his estate would be divided in case he dies without writing a will. (5 marks)
- b) Since he is adamant that he does not want to write a will, what he can do to still provide for all the people that depends on him. (5 marks)