

COUNCIL OF LEGAL EDUCATION



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

ATP 102: PROBATE & ADMINISTRATION

MONDAY 27TH MARCH, 2023.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **SEVEN (7)** 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

Blessings married Carrington under civil marriage in 1970. Their marriage was blessed with two issues; James and Mary born in 1971 and 1973 respectively. Blessings was a nurse while Carrington a consultant pediatric doctor. Carrington is a consultant at the Kenyatta National Hospital as government employee and at the same time operates his private clinic. Blessings and Carrington were a hard working couple. They made efforts to purchase properties which they registered as joint tenants and tenants in common. Their matrimonial home, Nairobi/Karen/block 12YY, was registered in their joint names. Other properties registered jointly were: Nakuru/Ngata Block 12/HH, Nakuru/Municipality/Block 15/XX, Nairobi/Karen/Block 2DD and Mombasa/Municipality/Block/34/106. Mombasa/Nyali Block 2/22 is owned by Mary and Carrington as tenants in common. Properties acquired and registered by Carrington alone were: Nairobi/ Karen Block 2/ 103G, Kisumu/Milimani Block 12/104F, Kisumu Municipality Block 10/708N, Muhoroni/Addra Block 1/15 Z, Sam Levy Apartments in Lavington and two high range motor vehicles. Carrington and his doctor colleague, Joel, purchased land which they developed and set up business premises which they named JC Doctors' Plaza. JC Doctors Plaza was jointly owned by Carrington and Joel and both had their medical clinics run from there.

In the year 2000, Carrington was concerned that he had too much property and few children and was advised by his father to marry another wife to bear more children for him. Unknown to Blessings, a traditional wedding was organized and Carrington married Joan in 2001. In January 2002, Blessing learnt about the existence of the marriage when she stumbled upon the birth certificate in her house bearing the name of a child named after her father in law, Peterson. When she confronted Carrington, he opened up and told her that he had married Joan and that Peterson was their first-born son. The discovery upset Blessings creating a fertile ground for discontent and frictions in the marriage. Carrington built a palatial home in Kivu where he moved to stay with Joan. He would make occasional visits to Blessings. When Joan got her third child Duke in 2004, Blessing could not take it anymore and she decided to file for divorce in 2005. The marriage was dissolved in 2008. In 2010, Blessings sought for division of the matrimonial property. The parties entered into a mutual agreement to divide the properties between themselves except those that were owned jointly with other parties or those solely owned by Carrington. In the division of the properties the following were given to Blessings: Nairobi/Karen/block 12YY, Nakuru/Ngata Block 12/HH, Nakuru/Municipality/Block 15/XX, Nairobi/Karen/Block 2DD and one high range motor vehicle. The rest of the properties were given to Carrington except that which they were registered as tenants in common. On 16th January 2011, the court ordered Carrington to execute the relevant conveyance forms to facilitate the transfer of the respective properties. On the 17th January 2011, Carrington was involved in a plane

crash in the Mara and died on the spot. At the time of Carrington's death, all Joan's children Peterson, Wendy and Duke were all underage. Joan had resigned from her job to marry Carrington and he had told her that he would pay her monthly upkeep to stay home and take care of their young children.

Mary is mentally unstable and lived with her mother. James had married and was living in Germany with his wife. The family met after the burial to discuss the distribution of the estate of Carrington. Joan is unhappy and is adamant that her children are young and if there is anything to be distributed, she must have a greater share of the property owned by her husband. Joan was of the view that her children should have priority over the other children since she was the official wife of Carrington. She considered Mary as an invalid and undeserving of the inheritance and that Mary is already provided for by virtue of her ownership of Mombasa/Nyali Block 2/22A. That Blessings having been divorced is not a wife and therefore not beneficiary of the estate.

As an expert in probate:

- a) Using relevant legal provisions and case law, explain what the fate of JC Doctor's Plaza would be. (6 Marks)
- b) Advise Blessings on her rights of inheritance from the estate, if any. (4 marks)
- c) Advise Joan on how to safeguard her rights in the estate, if any, and those of her children. (4 marks)
- d) Proffer legal opinion on the position of Mary as a beneficiary. (6 Marks)

QUESTION TWO

Mr. Abisai had one wife - Alice who bore him 4 children. He also had a son - Abednego whom he got with a lady he had a secret relationship with. Mr. Abisai had in place a will wherein he bequeathed everything to Alice and her 4 children. Back in his mind, he knew he would later amend his will to include his son Abednego. However, this did not happen as he died abruptly following a tragic road accident. After his burial, Alice armed with the will, sought the services of a lawyer. One of the witnesses to the will who was a close friend of Mr. Abisai informed Abednego about the will and even gave him a copy. Abednego who was a second year university student, was distraught that he was left out of his father's will and decided to take legal action. He has subsequently visited 'the pro bono lawyers association' where you are employed as a legal counsel. His matter has been allocated to you for your action.

- a) Explain the type of application you would institute on his behalf. (2 marks)
- b) With the help of case law and relevant statutory provisions, discuss 4 circumstances that the court would consider when ruling on applications of this nature. (8 marks)

QUESTION THREE

- A. Julie wrote a will in 2006 leaving all her estate to her siblings Peris and Jenny should she precede them in death. Due to Julie's health condition, Peris was entrusted to take care of her. Her condition required someone to be around her to assist with her movement and daily care. Julie's demands often left Peris exhausted and so she would forget to attend to some of the chores in the house. This infuriated Julie and made her to revisit the will to remove Peris from it. In one of the days, Julie grabbed her will from her bedside drawer with intention to revoke it. Patrick and Coolie, her nephews, had visited her that day and were in her bedroom when she intimated to them that she wanted to revoke her will and would need their assistance. She handed the will to them who burnt it within her compound. Three days later, Julie died and an issue arose as to the will she had written.

Using the relevant legal provisions and case law, discuss the validity of Julie's actions. (5 Marks)

- B. By a will, Diana bequeathed all her estate to Paul, her only surviving relative, and, Rose her best neighbor. She had a copy of the will in the bedside drawer and one kept by her attorney, Caleb. Diana and Rose had issues that constrained their friendship over the years. Diana decided to make some changes to the will and deleted Rose's name from the will. She then took out the will and cancelled Rose's name using red pen signaling her dislike for her. Diana appended her signature and date on the deleted sections of the will. Diana died and her will was found in her bedroom with the deletions. Paul is happy as he now remains the sole heir of Diana. Paul has gone to inform Caleb of the changes Diana made to the will and insists that he be given all the properties left by Diana to the exclusion of Rose. He also informs Rose that Diana had removed her as a beneficiary under the will. Rose has sought help from you.

Advise her on her legal rights, if any.

(5 Marks)

QUESTION FOUR

Gabriella was diagnosed with Covid 19 Corona virus in February 2020. She was immediately rushed to hospital and put on oxygen immediately. After a few days she was sent to a quarantine facility in the outskirts of the city. Having looked at the media reports on the disease, she believed her days were numbered. She called her daughter Madonna and her son Maradona and informed them that in case of anything all her assets should be divided equally between the two of them. She further told them that her fiancé Ronaldo would administer the estate since he was trust worthy and he knew

everything about her properties and finances. She also told them that she intended to give him the commercial plot in Membley as a gift. She felt that by gifting him the said plot, he would not neglect her children. She then called Ronaldo and told him that she had given him the said Membley commercial plot as a gift and that he would administer her estate and ensure that her children got equal shares of all her property and assets. She then told him to organise for a zoom meeting between her two children, himself and herself so that she could proclaim everything in the presence of everyone. Two days later, they had a zoom meeting and Gabriella emotionally proclaimed;

“I am not certain I will survive this disease and this are my wishes in the event I pass on. All my possessions including cash in banks, shares, plots and real estate investments shall be shared equally between my 2 children Madonna and Maradona. Ronaldo shall be the administrator of my estate and I hereby appoint him the executor of my wishes. I have given my commercial plot at Membley to Ronaldo as a gift. I have also given him the Land rover defender 110 as a gift since he helped me buy it.”

She asked her daughter Madonna who had a good handwriting to put everything in writing and to have each of them append their signatures. This was done and dated 14th February 2020.

Gabriella stayed at the quarantine facility and was discharged after two months. The doctors told her she was at liberty to go home and continue with daily life as she no longer had the virus. Gabriella was finally re-united with her children and fiancé. In December 2020, whilst on Christmas vacation, realizing how fragile life was, Gabriella and Ronaldo decided to formalize their relationship. They set in motion plans for a traditional marriage ceremony. They set the date of the wedding as 22nd August 2021. Before then, Ronaldo’s extended family was to visit the Gabriella’s family for purposes of fulfilling the traditional rites of dowry. In consultation with her family, the visit to her home was set for 15th April 2021. On 13th April 2021, while on the way to her rural home for preparations, her car was involved in a tragic accident and she died on the spot. She left behind her son who was still a minor of 17 years and her daughter who was 20 years old and had just been admitted to a Ivy league university to study Psychology.

After the funeral, Gabriella’s elderly father was keen on petitioning for grant of letters of administration to enable him administer the estate. Ronaldo was of the view that he was the deceased’s husband since they lived and cohabited together and had already planned a wedding. The children were of the view that their mother’s wishes in the document dated 14th February 2020 should be upheld as a valid will.

- a) With help of case law and statutory provisions give a legal opinion on the validity of the gifts that Gabriela gave Ronaldo on 14th February, 2020. (4 marks)

- b) Assume that Ronaldo has gone ahead to petition for letters of administration stating that he was the deceased's husband. Madonna and Maradona approach you for advice after seeing it in the special gazette notice. Maradona has turned 18 years. They are both worried he may lock them out of their mother's estate since he did not include their names in the petition.
Explain the proceedings you would need to file and the ground(s) thereof so as to protect their interests. (4 marks)
- c) Explain whether Ronaldo is a husband of the deceased for purposes of succession. (2 marks)

QUESTION FIVE

Debbie Espinosa is a rich woman living in Nairobi. She owns blocks of apartment (Debbie Suites) within Lavington comprising fifteen (15) units for residential and two (2) large offices. She uses the two large offices for official business. She has good relationship with her tenants. She lives in Karen and has two grown sons, Peter and Maxwell, who also work in Nairobi. The sons rarely visit Debbie in her office and are unknown to the tenants. Rent was paid directly to Debbie in her office. Three months ago, Debbie died in a road accident. She died intestate. The tenants have not paid rent for the past three months' despite being given time to clear the arrears. They are adamant that Debbie never introduced the two sons to them and that they have no proof of their status. They have therefore refused to pay rent. Peter and Maxwell have come to you for legal advice.

- a) Advise them on the relevant grant(s) they need to take out to enable them take action against the tenants. (5 marks)
- b) If Peter and Maxell were minors what steps would be taken to ensure that legal action is taken against the tenants. (5 marks)

QUESTION SIX

Ann and Tony got married 5 years ago. Out of their marriage, they were blessed with a baby girl Camilla. Shortly thereafter, they were desirous of making wills and they visited their lawyer. They instructed him to prepare 2 mirror wills for each of them, leaving everything to each other and in the event none survived the other, then all was to devolve to their only daughter Camilla. The lawyer subsequently prepared the two wills and he called them to visit his chambers to approve and execute the will, but they were not available on the appointed date. A few days later, Tony was killed in a suicide bombing incident. Apart from his wife Ann and daughter Camilla, Tony was also survived by his only brother Jack.

After his funeral, Ann whilst going through his documents found a duly executed will prepared by their lawyer dated 10 years ago. In this will, Tony bequeathed his estate to a charitable trust and appointed Jack as the executor of the will.

Ann has subsequently approached you for legal advice.

- a) Advise her on the validity or otherwise of the will made 10 years ago. (3 marks)
- b) Explain who would be entitled to take out grant and what type of grant should be applied for. (3 marks)
- c) Ann is of the view that the intended will by Tony prepared by their lawyer is valid. She believes the same represents Tony's last wishes and should be upheld. With the help of relevant statutory provisions and case law, advise her on the validity or otherwise of the written will prepared by their lawyer. (4 marks)

